SUPREME COURT, U. S.

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No. 262

IN THE

Supreme Court of the United States

OCTOBER TERM, 1970

MRS. MARTHA BAILEY CRICHTON,

Petitioner

v.

SUCCESSION OF POWELL CRICHTON (MISS MARGARET S. HEMINGWAY, ANCILLARY TESTAMENTARY EXECUTRIX), MRS. GLORIA CRICHTON McGEHEE, and POWELL CRICHTON, JR.,

Respondents

APPENDIX

TO

PETITION FOR A WRIT OF CERTIORARI TO THE COURT OF APPEAL, SECOND CIRCUIT, STATE OF LOUISIANA, OR, IN THE ALTERNATIVE, TO THE SUPREME COURT OF LOUISIANA

R. L. CURRY, III
THOS. W. LEIGH
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OF COUNSEL

APPENDIX

(bound separately)

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APPENDIX A

SUCCESSION OF POWELL CRICHTON
PROBATE NO. 3430
TWENTY-SIXTH JUDICIAL DISTRICT COURT
OF LOUISIANA
IN AND FOR THE PARISH OF WEBSTER

JUDGMENT

This cause having come on regularly for trial on December 12, 1966, upon the Petition and Rule to Homologate and Approve Inventory, filed herein on June 3, 1965, by Margaret S. Hemingway, Testamentary Executrix, the Answers thereto filed, respectively, by Powell Crichton, Jr., Mrs. Gloria Crichton McGehee, O. H. Haynes, Jr., Sheriff and Ex-Officio Inheritance Tax Collector, and Kate Crichton and Edward Bailey Crichton; upon the Petition for Possession of Interest in Community Property, filed herein on July 6, 1965, by Mrs. Martha Bailey Crichton, the Answers thereto filed, respectively, by Margaret S. Hemingway, Testamentary Executrix, and Kate Crichton and Edward Bailey Crichton; and upon the Stipulation of the parties heretofore made a part of the record and formally filed herein (as Joint Exhibit 1) on February 13, 1969, and the Court having considered, for the reasons orally assigned on February 13, 1969, that the law and evidence are in favor of respondents Powell Crichton, Jr. and Mrs.

Gloria Crichton McGehee, and against petitioner Margaret S. Hemingway, Testamentary Executrix, respondent and petitioner Mrs. Martha Bailey Crichton, and respondents Kate Crichton and Edward Bailey Crichton,

IT IS THEREFORE ORDERED, ADJUDGED AND DECREED that the injunction issued herein on December 8, 1965, directed to Margaret S. Hemingway, Testamentary Executrix, enjoining her from disposing of, alienating or removing from the State of Louisiana, any of the movable property of the Succession of Powell Crichton claimed by Mrs. Martha Bailey Crichton as community property, be and the same is hereby dissolved, rescinded and annulled;

IT IS FURTHER ORDERED, ADJUDGED AND DECREED that the order issued herein on May 4, 1966, denying the motion of Powell Crichton, Jr. and Mrs. Gloria Crichton McGehee for partial summary judgment, be and the same is hereby recalled, rescinded and annulled;

IT IS FURTHER ORDERED, ADJUDGED AND DECREED that that certain Opinion and Decision and that certain Final Order, dated, respectively, March 9, 1966, and March 17, 1966, rendered by the Surrogate's Court in and for the County of Westchester, State of New York, in the proceeding styled "In the Matter of the Judicial Settlement of the Intermediate Account of Margaret S. Hemingway, as Executrix of

the Last Will and Testament of Powell Crichton, Deceased", bearing File No. 408-1963 on the docket of that court, as affirmed on June 1, 1967, by the Court of Appeals of the State of New York (said affirming opinion being reported at 20 N.Y. 2nd 124, 281 N.Y. Supp. 2nd 811), be and the same are hereby found to be entitled to, and are hereby given, full faith and credit by this Court pursuant to Article IV, Section 1 of the Constitution of the United States, and are hereby deemed to be res judicata of all matters at issue herein (except matters involving immovable properties of the Succession, as hereafter set forth); and, accordingly, Mrs. Martha Bailey Crichton is hereby declared to have no interest in the movable properties of the Succession and her petition for possession is hereby dismissed;

IT IS FURTHER ORDERED, ADJUDGED AND DECREED that the Inventory and Appraisement of properties of the Succession in Webster Parish, Louisiana, filed herein on April 26, 1964, be and the same is hereby modified and amended in the following particulars, to-wit:

(1) Paragraph I of said Inventory and Appraisement, entitled "REAL PROPERTY BELONGING TO THE SEPARATE ESTATE OF POWELL CRICHTON", is amended: (a) by adding thereto the following:

"An undivided one-sixth (1/6th) interest in and to the following described property, to-wit:

Township 18 North, Range 9 West

Section 10: S½ of SW¼, being 80 acres, more or less; said one-sixth interest valued at $100.00

Section 15: NE¼ of NW¼, being 40 acres, more or less (LESS AND EXCEPT tracts previously sold therefrom); said one-sixth interest valued at 50.00

Township 19 North, Range 8 West

Section 4: S½ of NE¼, being 80 acres, more or less; said one-sixth interest valued at 100.00

Township 19 North, Range 10 West

Section 13: NW¼ of NE¼ and SW¼ of NE¼, being 80 acres, more or less; said one-sixth interest valued at 50.00

Township 21 North, Range 10 West

Section 31: An undivided one-half (½) interest in NE¼ of NE¼, S½ of NE¼ and NW¼ of SE¼, being 160 acres, more or less, said 1/6th interest in said undivided 1/2 interest (or a total of an undivided 1/12 interest) valued at 100.00

Township 22 North, Range 9 West

Section 14: An undivided one-eigth (1/8th) interest in E½ of NW¼, SW¼ of NE¼, and NE¼ of SW¼, being 160 acres, more or less, said 1/6th interest in said undivided 1/8th interest (or a total of an undivided 1/48th interest) valued at 25.00";

and (b) by deleting the total appraisement in said Paragraph I of "$29,112.13" and substituting therefor the following:

"TOTAL VALUE OF REAL ESTATE BELONGING TO DECEDENT'S SEPARATE ESTATE $29,537.13";

(2) Paragraph III of said Inventory and Appraisement, entitled "REAL PROPERTY BELONGING TO THE COMMUNITY OF ACQUETS AND GAINS FORMERLY EXISTING BETWEEN POWELL CRICHTON (DECEDENT) AND HIS SECOND WIFE, MRS. MARTHA BAILEY CRICHTON, DECEDENT'S SURVIVING WIDOW, REFERRED TO AS 'SECOND COMMUNITY' ", is amended: (a) by deleting therefrom the following:

"An undivided one-third interest in and to the following:

Township 18 North, Range 9 West

Section 10: S½ of SW¼, being 80 acres;

	more or less; decedent's undivided one-half community interest in said undivided one-third interest (or a total of an undivided one-sixth (1/6th) interest) valued at	$100.00
Section 15:	NE¼ of NW¼, containing 40 acres, more or less; LESS AND EXCEPT tracts previously sold therefrom; decedent's undivided one-half community interest in said undivided one-third interest (or a total of an undivided one-sixth (1/6th) interest) valued at	50.00

* * * * *

Township 19 North, Range 8 West

Section 4:	S½ of NE¼, containing 80 acres, more or less; decedent's one-half community interest in said undivided one-third interest (or a total of an undivided one-sixth (1/6th) interest) valued at	100.00

Township 19 North, Range 10 West

* * * * *

Section 13: NW¼ of NE¼; and the SW¼ of NE¼; containing 80 acres, more or less; decedent's one-half community interest in said undivided one-third interest (or a total of an undivided one-sixth (1/6th) interest) valued at 50.00

Township 21 North, Range 10 West

* * * * *

Section 31: An undivided one-half interest in the NE¼ of NE¼, the S½ of NE¼, and the NW¼ of SE¼; containing 160 acres, more or less; decedent's one-half community interest in said undivided one-half interest of said undivided one-third interest (or a total of an undivided one-twelfth (1/12th) interest) valued at 100.00

Township 22 North, Range 9 West

Section 14: An undivided one-eighth interest in and to the E½ of NW¼, the SW¼ of NE¼, and the NE¼ of SW¼, containing 160

acres, more or less; decedent's community one-half interest in said one-third interest in said one-eighth (or a total of an undivided one-forty-eighth (1/48th) interest valued at 25.00";

and by substituting therefor the following:

"An undivided one-sixth interest in and to the following:

Township 18 North, Range 9 West

Section 10: S½ of SW¼, being 80 acres, more or less; decedent's undivided one-half community interest in said undivided one-sixth interest (or a total of an undivided one-twelfth (1/12th) interest) valued at $50.00

Section 15: NE¼ of NW¼; containing 40 acres, more or less; LESS AND EXCEPT tracts previously sold therefrom; decedent's undivided one-half community interest in said undivided one-sixth interest (or a total of an undivided one-twelfth (1/12th) interest) valued at 25.00

* * * * *

Township 19 North, Range 8 West

Section 4: S½ of NE¼, containing 80 acres, more or less; decedent's one-half community interest in said undivided one-sixth interest (or a total of an undivided one-twelfth (1/12th) interest) valued at 50.00

Township 19 North, Range 10 West

* * * * *

Section 13: NW¼ of NE¼, and the SW¼ of NE¼, containing 80 acres, more or less; decedent's one-half community interest in said undivided one-sixth interest (or a total of an undivided one-twelfth (1/12) interest) valued at 25.00

Township 21 North, Range 10 West

* * * * *

Section 31: An undivided one-half interest in the NE¼ of NE¼, the S½ of NE¼, and the NW¼ of SE¼ containing 160 acres, more or less; decedent's one-half community interest in said undivided one-half interest

of said undivided one-sixth interest (or a total of an undivided one-twenty-fourth (1/24th) interest) valued at . 50.00

Township 22 North, Range 9 West

Section 14: An undivided one-eighth interest in and to the E½ of NW¼, the SW¼ of NE¼, and the NE¼ of SW¼, containing 160 acres, more or less; decedent's community one-half interest in said one-sixth interest in said one-eighth (or a total of an undivided one-ninety-sixth (1/96th) interest) valued at 12.50";

and (b) by deleting the total appraisement in said Paragraph III of "$819.47" and substituting therefor the following:

"TOTAL VALUE OF DECEDENT'S INTEREST IN REAL PROPERTY BELONGING TO SECOND COMMUNITY $606.97";

(3) Paragraph V of said Inventory and Appraisement, entitled "PERSONAL PROPERTY OF DECEDENT WITHIN THE STATE OF LOUISIANA, ALL BELONGING TO THE COMMUNITY OF ACQUETS AND GAINS HERETOFORE EXISTING BETWEEN DECEDENT AND HIS SECOND WIFE, MRS. MARTHA BAILEY CRICHTON, HIS SUR-

VIVING WIDOW, REFERRED TO AS THE 'SECOND COMMUNITY' ", is amended: (a) by deleting said caption and substituting therefor the following:

"V. PERSONAL PROPERTY BELONGING TO THE SEPARATE ESTATE OF THE DECEDENT, POWELL, CRICHTON";

(b) by deleting from Subparagraph B thereof the following:

"4 (a) Interest due on November 15, 1962 on above described treasury notes $1,868.75";

(c) by adding to said Subparagraph B the following:

"5 (a) Interest due November 15, 1962 on above described treasury certificates $ 525.00";

(d) by deleting the total appraisement in said Subparagraph B of "$195,349.91" and substituting therefor the following:

"TOTAL STOCKS, BONDS AND DIVIDENDS $194,006.16";

(e) by deleting from Subparagraph C thereof the following:

"1. Interest in ledger credit balance of T. Crichton, Jr., Agent, Minden, Louisiana $21,508.30

"2. LESS one-third of liabilities and debts as of November 15, 1962 3,416.29

Total $18,092.01";

(f) by deleting the total appraisement in said Subparagraph C of "$22,898.80" and substituting therefor the following:

"TOTAL MISCELLANEOUS PERSONAL PROPERTY $ 4,806.79";

and (g) by deleting from the summary of said Paragraph V the following:

"SUMMARY OF PERSONAL PROPERTY:

A. CASH ON HAND	$ 88,032.79
B. STOCKS, BONDS AND DIVIDENDS DUE	195,349.91
C. MISCELLANEOUS	22,898.80
TOTAL PERSONAL PROPERTY	$306,281.50
"DECEDENT'S UNDIVIDED COMMUNITY ONE-HALF INTEREST THEREIN	$153,140.75";

and substituting therefor the following:

"SUMMARY OF PERSONAL PROPERTY:

A. CASH ON HAND	$ 88,032.79
B. STOCKS, BONDS AND DIVIDENDS DUE	194,006.16
C. MISCELLANEOUS	4,806.79
TOTAL PERSONAL PROPERTY	$286,845.74";

(4) Paragraph VI of said Inventory and Appraisement, entitled "VALUE OF TIMBER" is amended: (a) by deleting Subparagraph A and C thereof in their entirety and substituting therefor the following:

"A. VALUE OF TIMBER located on real property described in Paragraph I hereof, computed on the basis of $7.50 per acre for the decedent's undivided interest, valued at $ 13,137.88

* * * * *

"C. VALUE OF TIMBER located on real property described in Paragraph III hereof, computed on the basis of $7.50 per acre for the decedent's undivided interest, valued at 467.85";

and (b) by deleting the total appraisement in said Paragraph VI of $13,493.23" and substituting therefor the following:

"TOTAL VALUE of timber belonging to Decedent's Estate $ 13,705.73";

(5) The Recapitulation of said Inventory and Appraisement is amended by deleting the same in its entirety and substituting therefor the following:

"RECAPITULATION

I.	VALUE OF REAL ESTATE BELONGING TO DECEDENT'S SEPARATE ESTATE	$29,537.13
II.	VALUE OF DECEDENT'S INTEREST IN REAL ESTATE BELONGING TO FIRST COMMUNITY	766.67
III.	VALUE OF DECEDENT'S INTEREST IN REAL ESTATE BELONGING TO SECOND COMMUNITY	$ 606.97
	TOTAL REAL ESTATE	$ 30,910.77
IV.	VALUE OF SEPARATE MINERAL INTEREST	230.16
V.	VALUE OF PERSONAL PROPERTY	286,845.74
VI.	VALUE OF DECEDENT'S INTEREST IN TIMBER	13,705.73
	GRAND TOTAL	$331,692.40";

and as amended herein said Inventory and Appraisement, and the Inventories and Appraisements of properties of the Succession in the Parishes of Bossier and Claiborne, are hereby approved and homologated;

IT IS FURTHER ORDERED, ADJUDGED AND DECREED that the expert witness fee of M. Alton Evans,

Jr. be fixed in the sum of One Thousand Nine Hundred and No/100 ($1,900.00) Dollars and the same is hereby taxed as cost herein;

IT IS FURTHER ORDERED, ADJUDGED AND DECREED that Margaret S. Hemingway, Testamentary Executrix, be cast for all costs of this proceeding, including the expert witness fee of M. Alton Evans, Jr.

JUDGMENT RENDERED in Open Court on February 13, 1969, by Judge Price.

JUDGMENT READ, SIGNED AND FILED in Open Court this 7th day of May, 1969.

Monty M. Wyche
JUDGE, Twenty-Sixth Judicial District
Court in and for Webster Parish, Louisiana.

APPENDIX B

NO. 11,316

COURT OF APPEAL
SECOND CIRCUIT
STATE OF LOUISIANA

MRS. MARTHA BAILEY CRICHTON
PLAINTIFF-APPELLANT

vs.

SUCCESSION OF POWELL CRICHTON
(MISS MARGARET S. HEMINGWAY,
ANCILLARY TESTAMENTARY EXECUTRIX)
DEFENDANTS-APPELLEES

BEFORE AYRES, DIXON, WILLIAMS, JJ

DIXON, J. CONCURS WITH WRITTEN REASONS.
By Williams, J.

Powell Crichton died in New York on November 15, 1962 at the age of 78. He was born in Louisiana but left the state when he was very young. He practiced law in New York for many years and resided in Westchester County. In 1916 Powell Crichton married for the first time of which marriage two children, Powell Crichton, Jr. and Mrs. Gloia Crichton McGehee were born. The first Mrs. Crichton died in Westchester County, New York in 1923. In 1925 Mr. Crichton married a second time to Martha Bailey Crichton, the plaintiff-appellant. Two children were

born of this marriage. In 1935 the couple separated, Mrs. Crichton thereafter living in the British Colony, Bermuda, although the couple was never divorced. At his death Mr. Crichton was survived by his four children and his widow. According to the terms of his will, dated November 13, 1953, the entire estate passed in trust to his surviving children. No provision was made for his surviving wife. The bulk of his estate consisted of bank accounts, stocks, bonds and an interest in a partnership, all in Louisiana. He also left some real property located in Louisiana. The intangible movable property is the subject of this litigation.

Miss Margaret S. Hemingway, Mr. Crichton's secretary, was named Executrix in his will. Succession proceedings were opened in the state of New York where the will was admitted to probate on January 30, 1963 and Miss Hemingway qualified as Testamentary Executrix. On August 20, 1963 ancillary succession proceedings were opened in Louisiana and Miss Hemingway qualified as Ancillary Executrix. She filed an inventory purporting to describe and value the Louisiana properties and sought approval of the inventory. The personal property involved here was listed in the inventory as belonging to the second community and was valued at a total of $306,281.50. The widow asserted a claim to an undivided one-half interest in the personal property left by decedent and sought an order to

show cause why her community interest should not be recognized. She further sought to enjoin the Executrix from removing any of the property from Louisiana during the pendency of the proceedings. The son and daughter of the first marriage excepted to the jurisdiction of the Louisiana court to determine the ownership of the personal property. On January 4, 1966 the District Court overruled the exceptions. The Executrix was permanently enjoined from transferring the assets out of Louisiana.

On September 20, 1965 the Executrix filed an account in New York in which the widow's share of community property was listed as unpaid. Mrs. McGehee, the daughter of the first marriage, objected to the account primarily on the ground of inapplicability of Louisiana community property law. Mrs. Crichton objected to the account on the basis that the properties were held by Mrs. Hemingway solely as Ancillary Testamentary Executrix in Louisiana and could not be removed or disposed of because of the Louisiana injunction. Mrs. Crichton made no effort to assert any rights in Mr. Crichton's estate under New York law. The entire basis of her claim is based on LSA-C.C. Art. 2400[1]. Mrs. McGehee filed a motion for summary judgment. In a contradictory proceeding

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[1] "Art. 2400. All property acquired in this state by nonresident married persons, whether the title thereto be in the name of either the husband or wife, or in their joint names, shall be subject to the same provisions of law which regulate the community of acquets and gains between citizens of this State."

the Surrogate Court of Westchester County held that Louisiana's community property laws were not applicable and sustained the objection to the widow's claim. The court recognized that it had jurisdiction over the subject matter and jurisdiction over the person of all parties. **In Re Crichton's Will, 49 Misc. 2d 405, 267 N.Y.S. 2d 706 (1966).**

The children of the first marriage sought recognition in the Louisiana Court of the judgment of the Surrogate Court under the Full Faith and Credit clause by means of a motion for partial summary judgment. This motion was denied by the district court. From this ruling application for supervisory writs were made to this court and the Louisiana Supreme Court. The applications were denied on the ground that an adequate remedy could later be had on appeal.

The Executrix and widow appealed the Surrogate's decision to the Supreme Court, Appellate Division (Second Department) of the State of New York which unanimously affirmed the Surrogate decision rejecting the widow's claim. **In the matter of the Will of Powell Crichton, Deceased, 26 A.D. 2d 639, 272 N.Y.S. 2d 987 (1966).** Before the case was decided the widow's appeal was dismissed for failure to prosecute. The Executrix appealed to the New York Court of Appeals, the highest court of that state, which in an opinion by the Honorable Keating, J., unanimously affirmed the decision of the Surrogate

Court. **In Re Estate of Crichton, 20 N.Y. 2d 124, 281 N.Y.S. 2d 811, 228 N.E. 2d 799 (1967).** That court held that New York law should be applied, relying primarily on the legal fiction that movables follow the person "mobilia sequuntur personam".

The instant case was thereafter tried in Louisiana. The trial court held that the final judgment of the New York Court of Appeals was entitled to full faith and credit. The previous ruling overruling an exception of res judicata was recalled and the exception was then sustained. In his oral opinion the judge below went on to say that if he were considering the matter on its merits he would have likewise chosen to apply the law of New York. The court further ordered the dissolution of the injunction previously issued. The widow has appealed suspensively from this judgment.

Article IV, Section 1 of the United States Constitution provides:

> "Full Faith and Credit shall be given in each State to the public Acts, Records and judicial Proceedings of every other State . . ."

This mandate was supplemented by the Act of Congress, 28 U.S.C.A. S1738.[2]

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2 "The Act of the legislature of any State, Territory, or Possession of the United States, or copies thereof, shall be authenticated by affixing the seal of Such State, Territory or Possession thereto. "The records and judicial proceedings of any court of any such State, Territory or Possession, or copies thereof, shall be proved or admitted in other courts within the United States and its

The federal jurisprudence has uniformly placed a judgment on a different level than a statute of another state. The United States Supreme Court reviewed the subject in **Magnolia Petroleum Company v. Hunt, 320 U.S. 430, 88 L. ed 149 (1944).** The Court therein reversed the Court of Appeal, State of Louisiana, 1st Circuit, which affirmed the judgment of the District Court of Calcasieu Parish, granting supplemental relief under Louisiana Workmen's Compensation law to an injured workman who had already received disability payments under Texas Workmen's Compensation law.[3] The Court made the following observation:

> "* * * In thus refusing, on the basis of state law and policy, to give effect to the Texas award as a final adjudication of respondent's claim for compensation for his injury suffered in Texas, the Louisiana court ignored the distinction, long recognized and applied by this Court, and recently emphasized in Williams v. North Carolina, supra (317 US 294, 296, 87 L. ed 283, 284, 63 S Ct 207, 143 ALR 1273), between the faith

2 .Cont'd,
Territories and Possessions by the attestation of the clerk and seal of the court annexed, if a seal exists, together with a certificate of a judge of the court that the said attestation is in proper form.
"Such Acts, records and judicial proceedings or copies thereof, so authenticated, shall have the same full faith and credit in every court within the United States and its Territories and Possessions as they have by law or usage in the courts of such State, Territory or Possession from which they are taken. June 25, 1948, C. 646, 62 Stat. 947."

(28 U.S.C.A. S1738)

3 It was later recognized that the constitutional requirement of full faith and credit did not bar an additional award in the second state unless the award in the first state was actually exclusive in nature. **Industrial Commission v. McCartin, 330 U.S. 622, 91 L. ed 1140 (1947).** However, the fundamental precepts of **Magnolia v. Hunt,** supra, remain unchanged.

and credit required to be given to judgments and that to which the local common and statutory law is entitled under the Constitution and laws of the United States."

* * *

"The full faith and credit clause and the Act of Congress implementing it have, for most purposes, placed a judgment on a different footing from a statute of one state, judicial recognition of which is sought in another . . ."

"From the beginning this Court has held that these provisions have made that which has been adjudicated in one state res judicata to the same extent in every other . . .

"* * * Even though we assume for present purposes that the command of the Constitution and the statute is not all-embracing, and that there may be exceptional cases in which the judgment of one state may not override the laws and policy of another, this Court is the final arbiter of the extent of the exceptions. * * * And we pointed out in Williams v. North Carolina, supra (317 US 294, 295, 87 L ed 283, 284, 63 S Ct 207, 143 ALR 1273), that 'the actual exceptions have been few and far between . . .'

* * *

"These consequences flow from the clear purpose of the full faith and credit clause to establish throughout the federal system the salutary principle of the common law that a litigation once pursued to judgment shall be as conclusive of the rights of the parties in every other court as in that where the judgment was rendered, so that a cause of action merged in a judgment in one state is likewise merged in every other. The full faith and credit clause like the commerce clause thus became a nationally unifying force. It altered the status of the several states as independent foreign sovereignties, each free to ignore rights and obligations created under the laws or established by the judicial proceedings of the others, by making each an integral part of a single nation, in which rights judicially established in any part are given nation-wide application. * * * Because there is a full faith and credit clause a defendant may not a second time challenge the validity of the plaintiff's right which has ripened into a judgment and a plaintiff may not for his single cause of action secure a second or a greater recovery."
(88 L ed 153 - 156)

The Supreme Court has further elucidated the rule that full faith and credit must be given to a foreign judgment even as to findings of jurisdiction

when that question has been litigated in the court rendering the original judgment.[4]

The Court succinctly stated the rule of res judicata as follows:

> "One trial of an issue is enough. 'The principles of res judicata apply to questions of jurisdiction as well as to other issues,' as well to jurisdiction of the subject matter as of the parties."
>
> (Treinies v. Sunshine Mining Co., 308 U.S. 66, 78; 84 L ed 85, 93 (1939)).

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[4] In Durfee v. Duke, 375 U.S. 106, 11 L ed 2d 186, 84 S Ct 242 (1963) the following language is pertinent:

"However, while it is established that a court in one State, when asked to give effect to the judgment of a court in another State, may constitutionally inquire into the foreign court's jurisdiction to render that judgment, the modern decisions of the Court have carefully delineated the permissible scope of such an inquiry. From these decisions there emerges the general rule that a judgment is entitled to full faith and credit — even as to questions of jurisdiction — when the second court's inquiry discloses that those questions have been fully and fairly litigated and finally decided in the court which rendered the original judgment.

"With respect to questions of jurisdiction over the person, this principle was unambiguously established in Baldwin v. Iowa State Traveling Men's Assn., 283 US 522, 75 L ed 1244, 51 S Ct 517. There it was held that a federal court in Iowa must give binding effect to the judgment of a federal court in Missouri despite the claim that the original court did not have jurisdiction over the defendant's person, once it was shown to the court in Iowa that that question had been fully litigated in the Missouri forum. 'Public policy,' said the Court, 'dictates that there be an end of litigation; that those who have contested an issue shall be bound by the result of the contest, and that matters once tried shall be considered forever settled as between the parties. **We see no reason why this doctrine should not apply in every case where one voluntarily appears, presents his case and is fully heard, and why he should not, in the absence of fraud, be thereafter concluded by the judgment of the tribunal to which he has submitted his cause.**' 283 US, 525-526. 75 L ed at 1247." (Emphasis supplied).

(Durfee v. Duke, 375 US 106,11 L Ed 2d 186, 191, 192; 84 S Ct 242)

Error in the proceeding of the other court is not a defense to enforcement of a judgment.[5]

The Louisiana Courts have recognized the requirement of full faith and credit. In Biri v. Biri, 192 So. 2d 862 (La. App. 4th Cir. 1966) the court gave full faith and credit to a Texas divorce decree where both parties were domiciled in Texas when the divorce proceedings were instituted as found by the Texas court. The court recognized that Louisiana could concern itself only with the question of domicile and jurisdiction over the parties and the issues in a suit for recognition of a foreign judgment. In **Mente & Company v. Anciens Etablissements Verdier-Dufour & Cie., 177 La. 829, 149 So. 492 (1933),** the Louisiana Supreme Court remanded a case to the trial court for the purpose of receiving proper evidence of the New

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[5] See Milliken v. Meyer, 311 U.S. 457, 85 L ed 278, (1941) where the Court made the following statements:

"Where a judgment rendered in one state is challenged in another, a want of jurisdiction over either the person or the subject matter is of course open to inquiry . . . But if the judgment on its face appears to be a 'record of a court of general jurisdiction, such jurisdiction over the cause and the parties is to be presumed unless disapproved by extrinsic evidence, or by the record itself.' Adam v. Saenger, supra (303 US at p. 62, 82 L ed 651, 58 S Ct 454). In such case the full faith and credit clause of the Constitution precludes any inquiry into the merits of the cause of action, the logic or consistency of the decision, or the validity of the legal principles on which the judgment is based . . . Whatever mistakes of law may underlie the judgment . . . it is 'conclusive as to all media concludendi.' Fauntleroy v. Lum, supera (210 US at p. 237, 52 L ed 1042, 28 S Ct 641)."

(311 U.S. 457, 462; 85 L ed 278, 282, 283)

York proceedings. The Court stated further:

> "For when two suits involving the same issues between the same parties are brought before two separate courts each clothed with jurisdiction thereof, and both suits are allowed to proceed pari passu, the first judgment rendered in either of said courts is the judgment between the parties, and the suit in the other court immediately abates and must be dismissed. Code Prac. art. 94, as amended by Act No. 62 of 1918."[6]

The requirements for sustaining a plea of res judicata are set forth as follows in Article 2286 of the Louisiana Civil Code:

> "The authority of the thing adjudged takes place only with respect to what was the object of the judgment. The thing demanded must be the same; the demand must be founded on the same cause of action; the demand must be between the same parties, and formed by them against each other in the same quality."

The record unquestionably demonstrates that these requirements have been fully met. The issue of the widow's rights has been fully litigated in the New York proceedings. On the basis of the Full Faith and Credit Clause and the interpretation of that clause by the Supreme Court of the United States, we hold that we are bound to accord full faith and credit to the judgment of the Court of Appeals of the State of New York as a final decision between the parties regardless of whether or not the courts of Louisiana would have reached the same result.

The Full Faith and Credit Clause, however, does not require that we agree with another court's interpretation of one of our statutes. The interpretation

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[6] See LSA-C.C.P. art 532.

placed upon Article 2400 is incorrect and the conclusion reached is repugnant to our law.

Article 2400 of the Louisiana Civil Code reads as follows:

> "All property acquired in this State by nonresident married persons, whether the title thereto be in the name of either the husband or wife, or in joint names, shall be subject to the same provisions of law which regulate the community of acquets and gains between citizens of this State."
>
> (LSA-C.C. Art. 2400)

The New York Court of Appeals resolved the choice of law problem by examining the respective contacts which Louisiana and New York have to the controversy. The court posed the issue as follows:

> "The issue in this case is whether the community property laws of Louisiana should be applied to govern the property rights of New York domiciliaries in intangible personal property acquired during coverture. From the previous discussion, it is clear that the community property system is designed to regulate the property rights of married persons and, in particular, to protect the interest of each spouse in the property accumulated during marriage. * * * For reasons which become obvious merely in stating the purpose of the rule, Louisiana has no such interest in protecting and regulating the rights of married persons residing and domiciled in New York."
>
> (20 N. Y. 2d 124, 134)

The Court then made the following statements:

> "It is urged by the appellant that the Louisiana contacts with this case give it the paramount interest in the application of its law. Among the contacts which are urged as being significant are the facts the deceased was born in Louisiana, that, although he was domiciled in New York, the bulk of his fortune was made in Louisiana, and that the documentary evidences of his intangible property are located in that jurisdiction. Exactly how these contacts are related to the polices sought to be vindicated by Louisiana's community property laws is not made clear. The reason, no doubt, is that they have no relation whatever."
>
> (Ibid, p. 134-135)

The court concluded that New York law must be applied. The court then discussed whether Louisiana Courts would apply Louisiana or New York law. The reasons and conclusions are lengthy but deserve repeating here:

> "An examination of the context in which article 2400 was enacted would appear to indicate that it was intended to apply to property purchased by nonresidents who, subsequent to the acquisition of the property, become residents of Louisiana. In two cases decided by the Louisiana Supreme Court shortely before the enactment of article 2400, it was held that the **real** property of such persons located in Louisiana was not subject to the community property laws of Louisiana but rather to the laws of the State where the owners were domiciled at the time the property was acquired. (Huff v. Borland, 6 La. Ann. 436; Wolfe v. Gilmer, 7 La. Ann. 583). Louisiana does, of course, have a substantial interest in regulating the property rights of married persons domiciled in Louisiana, regardless of when the property was acquired, and it is, therefore, reasonable to assume that the effectuation of this governmental interest motivated the enactment of article 2400 . . . It might be noted that, although the Louisiana statutes subject to the community of 'acquets and gains' all property acquired by persons married in other jurisdictions (art. 2399, supra) after they become residents of Louisiana (La. Code of 1870, art 2401), no provision other than article 2400 is applicable to property acquired in Louisiana by nonresidents who later move to Louisiana."
>
> (20 N. Y. 2d 124, 131, 132)

The court then concluded:

> "Up to this point we have not considered whether the Louisiana courts would, in fact, apply their own law to determine the widow's rights in the property in question. Although it would appear from the unequivocal wording of the statute that this would be the case, the previous discussion of the context in which article 2400 was enacted, as well as the pertinent Louisiana decisions in this area, leads to the conclusion that the Louisiana courts might well apply New York law. Perhaps the leading Louisiana case in this area is Williams v. Pope Mfg. Co., 52 La. Ann. 1417, 27 So. 851, 50 L.R.A. 816 (1900). There the Supreme Court of Louisiana held that a cause of action for personal injuries suffered in Louisiana

was an intangible property right which had its legal situs at the domicile of the married woman and could not be said to have been property acquired in Louisiana. Therefore, the plaintiff wife, a nonresident of Louisiana, was permitted to sue instead of her husband. * * *

"This case was distinguished in a later decision of the Louisiana Supreme Court. The court appeared to indicate that the basis of the decision was not that article 2400 was inapplicable but rather that it would not be applied where the domiciliary law was not inimical to the policy of the State of Louisiana. (Matney v. Blue Ribbon, Inc., 202 La. 505, 12 So. 2d 253 (1942).)

"The application of New York law to the facts in this case could hardly be said to be inimical to the policy of Louisiana. The protection afforded the wife under our law certainly makes adequate provision for her financial security. * * * Therefore, whether **Williams** or **Matney** are regarded as controlling, a rather strong argument can be made that the Louisiana courts, under these circumstances, would not apply article 2400."

(20 N.Y. 2d 135, 136).

We cannot agree with the conclusion reached by the New York court. In the first place the court has refused to properly recognize Louisiana's right to establish its own conflict of laws rule. In clear unambiguous terms Article 2400 of the Louisiana Civil Code states the question of ownership of property located within this state is to be determined according to our laws. The right of the situs state to assert such a rule has been approved by commentators in the field of conflict of laws.[7]

---

[7] Professor Leflar has made the following observation:

"It must be remembered, whichever law be chosen, that the situs has a sort of primary control over property within its borders. The situs may refer the determination of marital interests in the movable to the law of the domicile, or it may determine the matter by its own law, as it pleases. For example, the Louisiana community property statutes are expressly applicable to all property, movable or immovable,

The New York court also erroneously relied heavily on cases decided before the passage of Article 2400 which first became part of our law as a result of the passage of Act 292 of 1852. Huff v. Borland, supra; Wolfe v. Gilmer, supra.

The New York court also appears to have completely ignored the most complete interpretation of Article 2400 by the Louisiana courts to date. In **succession of Dill**, 98 So. 752, 155 La. 47 (1924), the Louisiana Supreme Court sets forth the far reaching effects of LSA-C.C. art. 2400. In that decision the court stated:

> "Now it is clear that a community exists in the following cases:
>
> (1) Where the parties marry, and continue to live here.
> (2) Where the parties marry here, and remove out of the state.
> (3). **Where the parties marry outside the state, and continue to reside outside thereof.**
> (4) Where the parties marry outside the state, and then remove here together.
>
> "And all these communities have, as their basis, equality between the spouses; that is to say, properly acquired in this state by either of them falls into the community." (Emphasis supplied).
>
> "We therefore conclude that the accepted interpretation of the act of 1852 (R.C.C. art. 2400) is the correct interpretation thereof, and that **all property acquired in this state by married**

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7 Cont'd

acquired in Louisiana by non-residents. The great body of American authority, however, is to the effect that the law of the domicile, rather than that of the situs, at the time of acquisition controls. . ."

(Robert A. Leflar, The Law of Conflict of Laws, sec. 176 (1959))

persons becomes community property regardless of where both or either of them reside (unless they have contracted otherwise). R.C.C. art. 2329; Act 236 of 1910, p. 400." (Emphasis supplied).

(98 So. 752, 755)

In view of the clear language of Article 2400 and the preceeding authorities we are convinced that Mrs. Crichton was entitled as a substantive right to a one-half interest in the movable property left by the deceased under Louisiana Law.[8] However, as a consequence of the Full Faith and Credit Clause of the Federal Constitution we are bound to hold that the judgment of the State of New York is entitled to res judicata effect in Louisiana.

For the reasons so stated, the judgment appealed from is affirmed. Costs of this appeal are assessed to appellant.

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8 Worthy of note are the comments of the author in 42 Tulane Law Review 662 (1968).

Dixon, J. concurring.

I concur in holding that the New York decree is entitled to recognition under the full faith and credit clause of the United States Constitution. All the requirements of **res judicata** under c.c. 2286 are satisfied.

However, with due respect to the majority, I cannot join in that portion of the opinion which concludes that the New York courts were in error. Having reached the conclusion that is decisive of the case, the court proceeds to contribute to that great body of **obiter dicta** which helps make the law the living, growing, confusing thing that it sometimes becomes.

If we ought to examine whether the application of C.C. 2400 would require a conclusion different from that reached by the New York courts, the examination should be complete. The appellees claim that, even if the property involved is community by operation of C.C. 2400, it was acquired with separate property of the decedent, whose separate estate is entitled to restitution.

There is also a question ignored about the appliation of C.C. 10 to the facts of the case before us. Since that article specifically requires that the effect of the decedent's will be governed by the laws of New York as to the disposition of his movables located in Louisiana, it seems that our own codal provisions might require the same conclusion as that reached by the New York court. In re Lewis, 32 La. Ann. 385.

Further discussion of these two matters would seem to be gratuitous. Therefore, I respectfully concur.

APPENDIX C

COURT OF APPEAL

Second Circuit

State of Louisiana

No. 11,316

Mrs. Martha B. Crichton

v

Succession of Powell Crichton

ON APPLICATION FOR REHEARING

BY PLAINTIFF - APPELLANT

REHEARING REFUSED

MAR 3 - 1970

HAROLD L. BOOTH

CLERK, COURT OF APPEAL

Ayres. J., dissents from refusal

L.

APPENDIX D

SUPREME COURT OF LOUISIANA
New Orleans, 70112

MRS. MARTHA BAILEY CRICHTON April 20, 1970

v.

SUCCESSION OF POWELL CRICHTON No. 50, 471
(MISS MARGARET S. HEMINGWAY,
ANCILLARY TESTAMENTARY EXECUTRIX)

In re: Mrs. Martha Bailey Crichton applying for certiorari, or writ of review to the Court of Appeal, Second Circuit, Parish of Webster

---

Writ Refused.

The result is correct.

/s/ EHMcC
/s/ JBF
/s/ SSL
/s/ WBH
/s/ JWS
/s/ FWS
/s/ MEB

A TRUE COPY

Clerk's Office
Supreme Court of Louisiana
New Orleans, April 20, 1970

/s/ S. Wallace Miller
Deputy Clerk

APPENDIX E

SURROGATE'S COURT : WESTCHESTER COUNTY

In the Matter of the Judicial Settlement of the Intermediate Account of Proceedings of Margaret S. Hemingway, as Executrix of the Last Will and Testament of

POWELL CRICHTON,
Deceased.

OPINION AND DECISION

Duer & Taylor (Frederick M. Schlater and Arthur E. McInerney, of counsel),
Attorneys for Gloria C. McGehee,
Movant-Objectant

LeBoeuf, Lamb & Leiby (John A. Brough and Julian L. Peabody, of counsel),
Attorneys for Martha Bailey Crichton,
Respondent-Objectant

Colin Campbell Ives (Joseph M. Baltz, Jr., of counsel.).
Attorney for Respondent-Petitioner

Sidney S. Bobbe,
Attorney for Powell Crichton, Jr.,
Respondent-Objectant

David Cohn,
Special Guardian for Infants

Jaeger - S.

In an executrix' accounting proceeding the decedent's daughter by his first marriage moves for partial summary judgment as to one of the issues raised by her objections. The motion presents the question of whether the widow of a New York decedent acquired community property rights during

his lifetime in his Louisiana personal property by virtue of a Louisiana statute applicable by its terms to non-domiciliaries when New York was the state of marital domicile and no such rights existed under its laws.

The testator died on November 15, 1962, a resident of this County. His will, dated November 13, 1953, was admitted to probate by this court on February 11, 1963, and letters testamentary were issued to Margaret S. Hemingway, also a New York resident, who had been his secretary. The testator was survived by his second wife, Martha Bailey Crichton, a resident of Bermuda, from whom he had been separated since about 1935, by two children of his first marriage, and two children of his second marriage. The widow was omitted from the will and makes no claim to any rights under New York Law to take against the will by intestacy (Decedent Estate Law sec. 18).

The account reflects an estate of approximately $360,000.00 in personal property, the bulk of which was in Louisiana, and real property in that state. Ancillary proceedings were instituted in Louisiana, and ancillary letters testamentary were issued on April 28, 1964 to Margaret S. Hemingway. Subsequently, on June 3, 1965 the ancillary executrix initiated there a proceeding described as one for approval of her inventory and for the computation of the Louisiana inheritance taxes. The widow asserted therein a claim to community property rights in the personal prop-

erty there inventoried, which is being resisted by the son and daughter of the testator's first marriage. That son and daughter preliminarily excepted to the jurisdiction of the Louisiana court to determine the ownership of personal property of a New York decedent, but the exception to jurisdiction was overruled and the ancillary executrix was permanently restrained from disposing of or removing from the State of Louisiana any of the personal property belonging to the widow by an order of the Twenty-Sixth Judicial District Court, Webster Parish, Louisiana, dated January 4, 1966. As yet, no determination on the merits has been made by that court.

On July 2, 1965 Gloria C. McGehee, the daughter of the first marriage, filed a petition in this court to compel the executrix to account. In response thereto the executrix filed an intermediate account on September 20, 1965. Schedule "D-1" thereof sets forth as unpaid the widow's claim of her share of community property in the sum of $156,000.00. On December 2, 1965 Mrs McGehee filed objections to the account, which include an objection to an allowance of this claim on the ground that (1) Louisiana's community property laws are inapplicable; (2) under Louisiana law the claim is invalid; and (3) the widow has no rights except to take against the will by intestacy, a right which, as noted above, she has not asserted.

The widow thereupon filed an objection to the

inclusion in Schedule "A" of the account filed herein, of the items being accounted for in Louisiana on the grounds that (1) they are held by Margaret S. Hemingway solely as ancillary executrix in Louisiana and have not come into her hands as domiciliary executrix, and (2) the Louisiana court has enjoined the ancillary executrix from removing or disposing of those items.

The **instant** matter before this court is a motion by Mrs. McGehee (1) for partial summary judgment (CPLR Rule 3212[e]), in connection with her objection set forth above, disallowing the widow's claim to community property rights; or (2) in the alternative, for an order directing that such issue be severed and set down for trial; and (3) (a) to enjoin the widow from pressing her claim in any court except this court, and (b) to enjoin the executrix from abetting the widow in pressing said claim in any other jurisdiction.

The entire basis of the widow's claim is Article 2400 of the Louisiana Civil Code, which provides:

> "Art. 2400. Property acquired in state by non-resident
>
> Art. 2400. All property acquired in this State by nonresident married persons, whether the title thereto be in the name of either the husband or wife, or in their joint names, shall be subject to the same provisions of law which regulate the community of acquets and gains between citizens of this State."

The movant urges that since the widow was omitted from the will, her interest in this estate is limited to the statutory right of election (Decedent

Estate Law sec. 18, supra), which she has not asserted. It is clear, however, that the widow's position is akin to that of a petitioner in a proceeding to recover specific personal property alleged to be in the possession or under the control of an executrix (Surrogate's Court Act sec. 206-a). She is not claiming an interest in a decedent's estate. Instead she claims that the executrix withholds funds, to which the widow acquired title during the testator's lifetime by reason of the Louisiana statutes that such funds are not assets of this estate. Therefore, the question before the court is as to the ownership of movables owned by the decedent husband at the time of marriage or acquired during the marriage and is not as to any rights the widow may have in the descent and distribution of assets owned by a decedent at the time of his death.

Restatement, Conflict of Laws (1934), provides:

"Sec. 289. EFFECT OF MARRIAGE ON TITLE TO EXISTING MOVABLES.

At marriage the husband and wife respectively acquire such rights or other interests in movables then belonging to the other as are given by the law of the domicil of the husband at the time of the marriage.

* * * * * *

Sec. 290. MOVABLES ACQUIRED DURING MARRIAGE.

Interests of one spouse in movables acquired by the other during the marriage are determined by the law of the domicil of the parties when the movables are acquired.
Comment:

* * * * * *

c. When spouses have separate domiciles. If the spouses have separate domiciles at the time of the acquisition of movables, the law of the domicil of that spouse who acquires

the movables determines the extent of the interest of the other spouse therein.

* * * * * *

Sec. 293. MOVABLES HELD SEPARATELY TAKEN INTO ANOTHER STATE.

Interests in movables held separately by either spouse remain separate interests although the movables are taken into a state which creates community interests therein."

These rules, that the law of the state of the matrimonial domicile, or, in the case of separate domiciles, that the law of the state of the domicile of the spouse who acquires the movables, and not the law of the state or states where the assets may be physically present, controls as to the ownership of husband and wife of personal property, were approved in his treatise by an eminent commentator in this field (2 Beale, Conflict of Laws [1935] secs. 289.1-293.2). These choice of law rules rest upon the principle that movables have no situs, or rather that they accompany the person everywhere (Harding, Matrimonial Domicil and Marital Rights in Movables, 30 Michigan L. Rev. 859, 867-868 [1932], citing Story, Conflict of Laws [8th ed. 1883] sec. 186). However, some would only apply these rules to movables owned at the time of marriage and intangible movables acquired after marriage, but not to tangible movables acquired after marriage (e.g., Harding, Matrimonial Domicil and Marital Rights in Movables, supra, at pp. 867-872, 877). The assets in controversy are intangibles, consisting of stocks, bonds and bank accounts, located in Louisiana for the purpose of investment.

That the law of the State of the matrimonial domicile governs as to ownership of husband and wife of personal property is the law of the State of New York (Matter of Majot, 199 N.Y. 29, 32-34; Matter of Mesa Y. Hernandez, 172 App. Div. 467, 477, aff'd 219 N.Y. 566; Bonati v. Welsh, 24 N.Y. 157, 162-163; Hutchison v. Ross, 262 N.Y. 381, 396, 399-400, reargument denied 262 N.Y. 643; Hendricks v. Isaacs, 46 Hun 239, 242-243; Matter of James, 172 App. Div. 800, 802, reargument denied 174 App. Div. 936, rev'd on other grounds 221 N.Y. 242, reargument and amendment of remittitur denied 221 N.Y. 636; Chesny v. Chesny, 278 App. Div. 586, reargument and lv. to app'l den'd. 278 App. Div. 697), although the law of the state of the matrimonial domicile has not been followed in determining rights under contracts made elsewhere or the validity of inter vivos trusts with a situs elsewhere (e.g., Graham v. First Nat. Bank of Norfolk, 84 N.Y. 393, 399-400; Hutchison v. Ross, supra, 391, 394-397; Wyatt v. Fulrath, 16 N.Y. 2d 169).

The matrimonial domicile has been defined as the domicile of the husband, from the moment of the marriage until the matrimonial unit be dissolved (Harding, Matrimonial Domicil and Marital Rights in Movables, supra, at p. 865, citing Goodrich, Conflict of Laws [1927 ed.] secs. 29, 119).

None of the parties to this controversy is a Louisiana resident, nor was the decedent. The asserted basis

for applying Louisiana law is that the intangible personal property was physically present there, but this is outweighed by the dominant interest of this State in the marital rights of the parties (Auten v. Authen, 308 N.Y. 155, 162). New York is the state of the marital domicile, the state of the domicile of the spouse first acquiring this property, and the state of the most significant contacts with the matter in dispute. Were the court to apply other than domiciliary law with regard to personal property, fiduciaries would be confronted with the application of as many different laws as there were states in which the principal owned personal property.

Courts outside the state of Louisiana have refused to be bound by the Louisiana statute when it conflicted with their own laws. In Tirado v. Tirado, 357 S.W. 2d 468 (Tex. Ct. Civ. App. April 24, 1962, rehearing denied May 15, 1962), a divorce action brought by the plaintiff wife against her second husband in Texas, the state of the marital domicile, the defendant husband claimed that a working interest owned by the wife in and to certain oil and gas leases situated in Louisiana was community property by reason of Article 2400 of the Louisiana Civil Code. Said interests had been inherited by the plaintiff wife from her first husband. During her second marriage the production of oil and gas from Louisiana was sold and the proceeds were deposited in a Texas bank, as were the proceeds of oil and gas sold from lands in

Texas. The defendant argued he was entitled to one-half of all such funds because of the commingling. The wife urged that the Louisiana property was her separate property on the date of her second marriage and continued to be held in her name, that the sale of the Louisiana oil and gas was a sale of movable personal property; and that the cash received from the sale by her as a married woman domiciled in Texas was her separate property.

The Court held (1) Texas was the state of marital domicile; (2) oil and gas under both Louisiana and Texas law became personal property upon its production and severance; (3) the law of the state of the domicile of the parties determined the ownership of the proceeds of the sale; (4) the Louisiana community property statutes had no extraterritorial effect; (5) the Louisiana statutes and decisions were contrary to the laws and public policy of Texas, and the Texas courts will refuse to go against Texas law and will enforce Texas law as a matter of public policy; (6) under Texas conflict of laws rules the Louisiana personal movable property and income therefrom would fall as separate or community property depending on the local law of Texas, the state of marital domicile; and (7) that under Texas local law, the wife having shown the assets acquired after the second marriage were acquired from her separate property, the burden was on the defendant husband to show otherwise, which

he failed to do. The contentions of the plaintiff wife were sustained.

In the **instant** case the basis of the objection of the testator's daughter, the movant, is that the intangible personal property involved was, or was acquired from, the separate property of the testator, and not from any funds constituting the separate property of the widow. No issue as to this is raised by the widow's opposing papers. Her contention is that this property became community property solely by reason of Louisiana's community property laws. She raises no triable issue of fact, but relies on Louisiana law and submits that this question should be decided by the Louisiana court in the ancillary proceedings there.

For the reasons hereinabove set forth, the court holds that Louisiana law has no application, and that the widow acquired no community property rights in the personal property of the decedent. The question is properly before this court as the court of domicile (Surrogate's Court Act, sec. 40).

Further support for this result is found in Kraemer v. Kraemer, 52 Cal. 302, 305 (Cal. Sup. Ct. 1877); Estate of Burrows, 136 Cal. 113, 68 Pac. 488 (Cal. Sup. Ct., 2d Dept. 1902); Estate of Warner, 167 Cal. 686, 691, 140 Pac. 583, 585 (Cal. Sup. Ct. 2d Dept. 1914); Estate of Frees, 187 Cal. 150, 154; 201 Pac. 112, 113-114 (Cal. Sup. Ct. 1921); and Estate of Thornton, 19

P. 2d 778, 783, 784 (Cal. Sup. Ct. 1933) superseded upon rehearing 1 Cal. 2d 1, 33 P. 2d 1 (Cal. Sup Ct. 1934). In the latter case, on rehearing, amendments to a California statute, which thereafter purported to apply California's community property laws to property acquired elsewhere by non-domiciliaries who became California domiciliaries subsequent to the passage of the amendments, were held unconstitutional. A California statute, passed subsequent to the second decision in Thornton, purporting to divest a decent domiciliary of property acquired elsewhere while a non-domiciliary, and to subject it to community property rights, was held unconstitutional in Paley v. Bank of America National Trust & Sav. Ass'n, 159 Cal. App. 2d 522, 324 P. 2d 35 (Cal. 2d Dist. Ct. App., Div. 1, 1958). A still later California statute applying quasi-community property rights to personal property acquired elsewhere by non-domiciliaries who subsequently became California domiciliaries, but only as part of state power to control distribution of property in connection with actions for divorce or separate maintenance, was held valid in Addison v. Addison, 62 Cal. 2d 558, 43 Cal. Rptr. 97, 399 P. 2d 897 (Cal. Sup. Ct. 1965). It should be noted, however, that the Louisiana statute goes further than the several California statutes - by seeking to control personal property of persons who at no time became Louisiana domiciliaries. The rationale of the California cases and statutes was always a control of property rights of its own domiciliaries.

Other cases in which the forum state refused to give community property rights to its domiciliaries as to property acquired before they became domiciliaries include Oliver v. Robertson, 41 Tex. 422, 425 (Tex. Sup. Ct. 1874); Blethen v. Bonner, 30 Tex. Civ. App. 585, 71 S.W. 290, 291 (1902, rehearing denied 1903, writ of error denied by Tex. Sup. Ct. 1903); and Douglas v. Douglas, 22 Idaho 336, 125 Pac. 796 (Idaho Sup. Ct. 1912).

Decisions in which non-community property states applied the community property laws of other states **to property acquired** by residents of the forum state **while domiciled in the community property state** include People v. Bejarano, 145 Colo. 304, 358 P. 2d 866, 868 (Colo. Sup. Ct. 1961); Commonwealth v. Terjen, 197 Va. 596, 90 S.E. 2d 801 (Va. Sup. Ct. App. 1956) and In re Kessler's Estate, 177 Ohio St. 136, 203 N.E. 2d 221 (Ohio Sup. Ct. 1964).

A situation closely parallel to the **instant** case was presented in Brookman v. Durkee, 46 Wash. 578, 90 Pac. 914 (Wash. Sup. Ct. 1907), where the Supreme Court of the State of Washington held that a Washington statute could not validly give community property rights to a wife in her husband's property in Washington when both were domiciliaries of New York.

Louisiana Civil Code Article 2400, supra, has no application to the movables accounted for herein. Since under domiciliary law Powell Crichton's person-

al property followed his person and had a New York situs, it was not property acquired within Louisiana within the meaning of that statute. This court will give no effect to, and will not be bound by, Louisiana's attempt to apply its community property laws to the personal property of persons not domiciled in that state (Brookman v. Durkee, supra; Tirado v. Tirado, supra; Restatement, Conflict of Laws secs. 289, 290, 293, supra).

The motion by Mrs. McGehee, the testator's daughter of his first marriage, for partial summary judgment is granted. Her first objection to the account of the executrix is sustained. The objections of Martha Bailey-Crichton, the widow, are dismissed.

On this motion Mrs. McGehee also requests that the widow be enjoined from pressing her claim in the Louisiana courts and that the executrix be enjoined from abetting her in this. While this court has **in personam** jurisdiction over all the parties, and has ". . . power to restrain those within the jurisdiction from doing anything that is contrary to equity and good conscience to the injury and damage of others, even though the threatened inequitable conduct consists of the prosecution of an action in a foreign jurisdiction . . ." (Paramount Pictures, Inc. v. Blumenthal, 256 App. 756, 758-759, appeal dismissed 281 N.Y. 682), triable issues of fact exist as to whether the foreign suit was brought to evade domiciliary law,

or in an attempt to evade the public policy of this state. The request for injunctive relief is denied.

Settle order.

March 9, 1966.

OTTO C. JAEGER, Surrogate

APPENDIX F

At a Surrogate's Court held in and for the County of Westchester at the Court House at 166 Main Street, White Plains, New York, on the 17th day of March 1966.

P R E S E N T :

Hon. Otto C. Jaeger
Surrogate.

In the Matter of the Judicial Settlement of the Intermediate Account of Proceedings of MARGARET S. HEMINGWAY, As Executrix of the Last Will and Testament of POWELL CRICHTON, Deceased.

FILE NO. 408-1963, FINAL ORDER

A petition having been presented by respondent Gloria C. McGehee, verified the 2nd day of July 1965 and duly filed in this Court praying that Margaret S. Hemingway, as executrix of the Last Will and Testament of Powell Crichton, deceased, be cited to show cause why she should not render and settle an account of her proceedings as such executrix, and a citation having been issued to, and duly served upon Margaret S. Hemingway, requiring said executrix to show cause before this Court on the 27th day of July 1965 why said executrix should not render and settle her account as such executrix and said return date having been duly adjourned; and

The petition of Margaret S. Hemingway, as executrix under the Last Will and Testament of Powell Crichton, duly verified, having been filed by her attorney, Colin Campbell Ives, praying that her intermediate account submitted and filed therewith be judicially settled and allowed; and

A citation dated September 20, 1965, having been thereupon issued and directed to all persons interested in said accounting proceedings, cited them to show cause before this Court on the 9th day of November 1965 why a judicial settlement should not be had of the intermediate accounts of Margaret S. Hemingway as executrix of the Last Will and Testament of Powell Crichton, deceased, and said citation having been returned with proof of due service thereof on Kate Crichton, Edward Bailey Crichton, Paul Duncan McGehee, Jr., Thomas Crichton McGehee, John Gredler McGehee, Edward McDuffie McGehee, Thomas Crichton III, The First National Bank of Shreveport, Louisiana and Paul Duncan McGehee; and

On the return day of the said citation, said executrix having duly appeared by Colin Campbell Ives; respondent, Gloria C. McGehee, having duly appeared by Duer & Taylor; respondent, Powell Crichton, Jr., having duly appeared by Sidney S. Bobbe; respondent, Martha Bailey Crichton, having duly appeared by LeBoeuf, Lamb & Lieby; and David Cohn having been appointed and duly qualified as Special Guardian on behalf of the infant children Paul Duncan

McGehee, Jr., Thomas Crichton McGehee, John Gredler McGehee and Edward McDuffie McGehee; and

Kate Crichton, Edward Bailey Crichton, Thomas Crichton III, The First National Bank of Shreveport, Louisiana and Paul Duncan McGehee having failed to appear; and

Objections to said account having been filed by Gloria C. McGehee, Martha Bailey Crichton and Powell Crichton, Jr.; and answers to said objections of Gloria C. McGehee and Powell Crichton, Jr. having been filed by said executrix; and

Martha Bailey Crichton, widow of the deceased having claimed in her Notice of Appearance that she was: "* * * an owner of a 1/2 interest in the personal property which formerly belonged to the community of acquets and gains existing between her and the decedent, * * *" and said claim having been repeated in her objections filed herein; and

It appearing from said account that at the time of his death, decedent owned either in his name or to his credit intangible personal property consisting of stocks and bonds in custody accounts, and bank accounts in the state of Louisiana and that said intangible personal property, or similar property subsequently derived therefrom and income therefrom, exceeding $300,000 in value is still in Louisiana held by or for said executrix; and

Respondent Gloria C. McGehee, by her attorneys, Duer & Taylor, having moved by order to show cause, for partial summary judgment in connection with her first objection to the account of the executrix herein, denying and disallowing the claim of Martha Bailey Crichton, as set forth in Schedule "D-1" of the account of the executrix to be the owner of one-half interest in intangible personal property belonging to decedent in the State of Louisiana by reason of Louisiana's community property laws; or in the alternative for an order directing that such issue be severed and set down for trial; and to enjoin the widow from pressing her claim in any court except the Surrogate's Court, Westchester County and to enjoin the executrix from abetting the widow in pressing said claim in any court except the Surrogate's Court, Westchester County:

Now, upon reading and filing said order to show cause dated December 2, 1965 and the affidavit of Frederick M. Schlater, sworn to the 2nd day of December 1965, and the interim report of the Special Guardian David Cohn, dated January 25, 1966, in support of said motion; and upon the affidavits of Margaret S. Hemingway and John A. Brough both sworn to the 8th day of December 1965, in opposition thereto; upon said account and all of said pleadings and proceedings heretofore filed and had herein; and

Having heard the respective attorneys for all of the parties who have appeared herein, and David

Cohn, Special Guardian; and due deliberation having been had, and

The Surrogate having rendered and filed his opinion and decision in writing, dated March 9, 1966;

Now upon motion of Duer & Taylor attorneys for respondent, Gloria C. McGehee, it is

ORDERED, ADJUDGED and DECREED that said motion for partial summary judgment in connection with Gloria C. McGehee's first objection to the account of the executrix be the same hereby is granted; that her first objection to the account of the exectrix is sustained; that the objections of Martha Bailey Crichton to the account of the executrix are dismissed; that the claim of Martha Bailey Crichton to be an owner of a 1/2 interest in the intangible personal property which belonged to the decedent in the State of Louisiana be and the same hereby is denied and disallowed; and that no community of acquets and gains existed between the decedent and Martha Bailey Crichton as to said intangible personal property located in Louisiana; and

ORDERED, ADJUDGED and DECREED that said issue relating to said claim of Martha Bailey Crichton, raised by Gloria C. McGehee's first objection to the account of the executrix be and the same hereby is severed and that this court retains jurisdiction as to the remaining issues in these proceedings and it is further

ORDERED, ADJUDGED and DECREED that triable issues of fact are raised by the request of Gloria C. McGehee to enjoin Martha Bailey Crichton from pressing this claim in any court except the Surrogate's Court, Westchester County and to enjoin the executrix from abetting her in pressing said claim in any court except the Surrogate's Court, Westchester County, and that said request be and the same hereby is on this motion denied, without prejudice.

Dated: Westchester County, New York
March 17th, 1966

OTTO C. JAEGER, Surrogate

APPENDIX G

In the Matter of the ESTATE of Powell CRICHTON, Deceased.

Margaret S. HEMINGWAY, as Executrix of Powell Crichton, Deceased, Appellant, v. Gloria C. McGEHEE et al., Respondents.

Court of Appeals of New York.

June 1, 1967.

KEATING, Judge.

Powell Crichton died on November 15, 1962. A native of the State of Louisiana, he apparently migrated to the State early in life. He was a member of the New York Bar and resided for many years in Westchester County.

Mr. Crichton was twice married. His first wife died in 1923. Two years later he took his second wife, Martha, who along with two children of their marriage and the two children of the first marriage, survived him. The marriage of Martha and Powell Crichton was apparently not a happy one, and the couple separated 10 years later in 1935. Although the separation did not end in divorce, the couple lived separate and apart from 1935 until Powell's death.

The will of Mr. Crichton made no provision for

his second wife. Instead, all of his estate passes, under the terms of his will, in trust, with the income payable in varing percentages to his four surviving children. The estate was valued at approximately $360,000. The bulk of that property consisted of bank acounts in Louisiana and stocks and bonds held in custody accounts in that State.[1] In addition to his personal property, the deceased left real property also located in Louisiana.

The will of Mr. Crichton named his secretary, Margaret S. Hemingway, as executrix of the estate. Miss Hemingway qualified in the State of New York where the will was probated and in the State of Louisiana where ancillary proceedings were instituted. On June 3, 1965, Miss Hemingway as ancillary executrix initiated in Louisiana a proceeding for the approval of her inventory and for the computation of the Louisiana inheritance taxes. The widow asserted a claim to community property rights in the personal property there inventoried, which was objected to by the son and daughter of the first marriage. The preliminary exceptions of the son and daughter to the jurisdiction of the Louisiana court to determine the ownership of the personal property were rejected by the Louisiana court, and on January 4, 1966 that court issued an order "permanently" restraining the

[1] The decedent owned lands in Louisiana containing oil and gas deposits. This property was managed by his brother who apparently invested the income derived therefrom in the stocks and bonds and maintained the bank accounts.

executrix from disposing of or removing the property from Louisiana. As of this date, the Louisiana courts have yet to make a ruling on the merits of the widow's claim.

While these proceedings were taking place in Louisiana the executrix filed an intermediate account in New York on September 20, 1965. The account set forth as allowed but unpaid the widow's share of the community property in the sum of $156,000.

On December 2, 1965 the daughter of the first marriage filed an objection to the allowance of the community property claim on the ground that (1) Louisiana's community property laws were inapplicable; (2) under Louisiana law the claim was invalid; and (3) the widow had no rights except to take against the will as provided for in section 18 of the Decedent Estate Law, Consol. Laws, c. 13—a right which she had not chosen to exercise.

The widow appeared and filed an objection to the inclusion in the account of items being accounted for in Louisiana on the ground that (1) they were being held by Margaret Hemingway as ancillary executrix in Louisiana and had not come into her hands as domiciliary executrix and (2) the Louisiana court had enjoined the ancillary executrix from removing or disposing of those items.

On a motion for partial summary judgment made

by the daughter, the Surrogate held that Louisiana's community property laws were not applicable and he sustained the objection to the allowance of the claim for community property.[2] The executrix and the widow appealed to the Appellate Division (Second Department) which unanimously affirmed. During the course of that proceeding, the widow's appeal was dismissed for failure to prosecute. The executrix appeals by leave of this court from the order of the Appellate Division.

There are a number of questions which must be resolved by this appeal. The first of these relates to the jurisdiction of the Surrogate to determine whether or not the widow has a community interest in the property in question. It is urged that the "Surrogate's Court erred in determining the ownership of property situated in Louisiana since the Surrogate's Court did not have jurisdiction over such property nor over the ancillary executrix appointed in Louisiana."

There is little question but that the Surrogate lacked the power to determine the rights of persons, not parties to this proceeding and over whom he had no jurisdiction, in the bank accounts, stocks and bonds located in Louisiana. (Hanson v. Denckla, 357 U.S. 235, 78 S.Ct. 1228, 2L.Ed.2d. 1283; Riley v. New York

2 The order of the Surrogate related only to the intangible personal property located in Louisiana. The respondents did not question the applicability of Louisiana law to the real property located in Louisiana.

Trust Co., 315 U.S. 343, 62 S.Ct. 608, 86 L.Ed. 885; Baker v. Baker, Eccles & Co., 242 U.S. 394, 37 S. Ct. 152, 61 L.Ed. 386.) The Surrogate, however, does have the power to render a decree which is binding on those persons over whom he has in personam jurisdiction. (Hanson v. Denckla, supra, 357 U.S. p. 254, 78 S.Ct. 1228.)

It is not disputed that the Surrogate had such jurisdiction over the widow and other beneficiaries of the estate. The Surrogate also had jurisdiction over the sole executrix of the estate. The authority of the executrix to represent the estate is recognized in Louisiana and New York and, therefore, any judgment rendered in this jurisdiction is binding on her both here and in Louisiana. (Carpenter v. Strange, 141 U.S. 87, 104, 11 S.Ct. 960, 35 L.Ed. 640; Helme v. Buckelew, 229 N.Y. 363, 367, 128 N.E. 216; Turley v. Dreyfus, 33 La.Ann. 885; Restatement, Conflict of Laws 1st and 2d [Tent. Draft], sec. 506, 510; Leflar, Conflict of Laws, sec. 195.)

The Surrogate, therefore, had jurisdiction to render an in personam judgment conclusively resolving the legal issues presented by this case. That he had subject-matter jurisdiction to determine whether the wife was the owner of property listed in the name of the decedent certainly cannot be questioned. (Surrogate's Ct. Act, sec. 40.)

It is urged, however, that the permanent injunct-

ion issued by the Louisiana court, pending termination of the proceeding in that jurisdiction, is entitled to full faith and credit and precludes a determination on the merits by the courts of this State. This order of the Louisiana court, though labled permanent, is nothing more than an injunction **pendente lite,** issued for the purpose of preserving the status quo until the Louisiana courts decide the issue on the merits. The order refers to the property in question as "allegedly" belonging to Mrs. Crichton and refers to her "alleged" interest therein. It is not a final order and, since there is no fnial Louisiana judgment on the merits, the courts of this State are not prohibited by the full faith and credit clause from dealing with the case on the merits.

The discussion thus far has been confined to the preliminary questions presented by this appeal. The main issue posed for our consideration is the choice of the applicable law.

Louisiana is one of several States of the Union which regulate the property rights of married persons through a system of laws known as community property. While this opinion is not the place for a detailed study of the community property system in Louisiana[3], a somewhat general discussion of those laws is appropriate.

In the absence of a marriage contract to the con-

3 See Morrow, Matrimonial Property Law in Louisiana, 34 Tul. L.Rev. 3 (1959).

trary, every marriage in the State of Louisiana "superinduces of right" the partnership of "acquets and gains". (La.Civ.Code of 1870, art. 2399.) By virtue of this provision all property acquired by either spouse during marriage becomes the property of both and, upon dissolution of the marriage or upon the death of either spouse, the property is divided equally between the two or between the surviving spouse and the heirs of the deceased. (La.Code of 1870, art. 2406.) During the marriage, however, the husband has complete control of the property and he may dispose of movable property by gift or sale. (La. Code of 1870, art. 2404; Oliphint v. Oliphint, 219 La. 781, 54 So.2d 18 [1951].) For the purpose of income tax laws, however, the wife is regarded as having a present interest as opposed to a mere expectant interest in the property. (Bender v. Pfaff, 282 U.S. 127, 51 S.Ct. 64, 75 L.Ed. 252.)

It should be noted that not all of the property of the spouses becomes part of the community of "acquets and gains." Property owned by either party prior to the marriage is not included nor is the property acquired during the marriage by gift, devise or bequest. (See Morrow, Matrimonial Property Law in Louisiana, supra.)

These rules just enumerated are part of "an ingenious, complex, and highly purposeful distribution of property rights between husband and wife" (United States v. Yazell, 382 U.S. 341, 351, 86 S.Ct. 500, 506,

15 L.Ed.2d 404). It is obvious, however, that Louisiana has no interest in regulating the property rights of married persons who are domiciled elsewhere, who were not married in that State nor ever resided there as husband and wife. Indeed, the Louisiana courts have recognized this to be the case. (See Hyman, Lichtenstein & Co. v. Schlenker & Hirsch, 44 La.Ann. 108.)[4]

The Louisiana Legislature has determined, however, that its community property laws should govern property acquired in Louisiana by nonresidents after their marriage. (Code of 1870, art. 2400.)[5] While it has been suggested that this action is indicative of the strength of the community property system in Louisiana (Morrow, Matrimonial Property Law in Louisiana,

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[4] Prior to the enactment of article 2400 of the Code of 1870 (infra, n. 5), the Louisiana courts refused to apply the community property laws to property owned by nonresidents even where real property located in Louisiana was involved. (Succession of McGill, 6 La.Ann. 327 (1851); Huff v. Boreland, 6 La.Ann. 436 (1851); Wolfe v. Gilmer, 7 La.Ann. 583 (1852).) Indeed, in at least one case after the enactment of the statute the court completely ignored the statute and held that real property purchased by a nonresident did not become community property. (Marlatt v. Citizen's State Bank & Trust Co., 180 La. 387, 156 So. 426 (1934); contra Smith v. Gloyd, 182 La. 770, 162 So. 617 (1935); Stanton v. Harvey, 44 La.Ann. 511, 10 So. 778 (1892); but cf. Freret v. Taylor, 119 La. 307, 44 So. 26 (1907).) The cases are discussed in Marsh, Marital Property in Conflict of Laws, 197-201.

[5] The statute provides: "All property acquired in this State by non-resident married persons, whether the title thereto be in the name of either the husband or wife, or in their joint names, shall be subject to the same provisions of law which regulate the community of acquets and gains between citizens of this State."

34 Tul.L.Rev. 3, 12, supra), no reason has been suggested, either by the appellant or the authorities on Louisiana law, for the application of the community property laws of Louisiana to intangible personal property of those married and domiciled in other jurisdictions.

An examination of the context in which article 2400 was enacted would appear to indicate that it was intended to apply to property purchased by non-residents who, subsequent to the acquisition of the property, become residents of Louisiana. In two cases decided by the Louisiana Supreme Court shortly before the enactment of article 2400, it was held that the **real** property of such persons located in Louisiana was not subject to the community property laws of Louisiana but rather to the laws of the State where the owners were domiciled at the time the property was acquired. (Huff v. Borland, 6 La.Ann. 436; Wolfe v. Gilmer, 7 La.Ann. 583.) Louisiana does, of course, have a substantial interest in regulating the property rights of married persons domiciled in Louisiana, regardless of when the property was acquired, and it is, therefore reasonable to assume that the effectuation of this governmental interest motivated the enactment of article 2400. (Compare Addison v. Addison, 62 Cal.2d 558, 43 Cal.Rptr. 97, 399 P.2d 897.) It might be noted that, although the Louisiana statutes subject to the community of "acquets and gains" all property held by persons married in Louisiana and

all property acquired by persons married in other jurisdictions (art.2399, supra) after they become residents of Louisiana (La.Code of 1870, art. 2401), no provision other than article 2400 is applicable to property acquired in Louisiana by nonresidents who later move to Louisiana.

In any event, while we assume that the presence of the stocks, bonds and bank accounts in Louisiana gives that State the power to adjudicate rights in that property according to its own laws, New York, as the State in which Martha and Powell Crichton were domiciled during their marriage,[6] certainly has an interest sufficient to justify the application of its law without violating the full faith and credit clause of the Federal Constitution. (Richards v. United States, 369 U.S. 1, 15, 82 S.Ct. 585, 7 L.Ed.2d 492; Hanson v. Denckla, 357 U.S. 235, 253 78 S.Ct. 1228, 2 L.Ed.2d 1283, supra; Crider v. Zurich Ins. Co., 380 U.S. 39, 85 S.Ct. 769, 13 L.Ed.2d 641; Carroll v. Lanza, 349 U.S. 408, 75 S.Ct. 804, 99 L.Ed. 1183; Pacific Employers Ins. Co. v. Industrial Acc. Comm., 306 U.S. 493, 59 S.Ct. 629, 83 L.Ed. 940; see, generally, Leflar, Constitutional Limitations on Free Choice of Law, 28 Law & Contemp.Prob. 706.)[7] And in this litigation we

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6 It appears that Martha Crichton resided in Bermuda at the time of the testator's death.

7 See United States v. Yazell (supra) for a discussion of the interest a State has in the application of laws regulating the marital property rights of its own domiciliaries and the importance which the Supreme Court attaches to giving effect to that State interest. The case involved a choice beween the application of Federal

must determine whether to give effect to the attempt of Louisiana to regulate the marital relationship of New York domiciliaries.

The traditional choice of law rule in this area is one which looks to the law of the marital domicile to determine the rights of the husband and wife in property acquired during coverture. (Wyatt v. Fulrath, 16 N.Y.2d 169, 172, 264 N.Y.S.2d 233, 234, 211 N.E.2d 637, 638; Matter of Majot's Estate, 199 N.Y. 29, 32, 92 N.E. 402, 29 L.R.A.,N.S., 780; Matter of Mesa y Hernandez, 172 App.Div. 467, 159 N.Y.S. 59, affd. 219 N.Y. 566, 114 N.E. 1069.) This rule has, however, been rejected by this court on at least two occasions, apparently for the reason that it failed, as most traditional conflict of laws rules do, to take cognizance of the policies of jurisdictions other than those which have what is regarded as the sole controlling contact and the interests which those other jurisdictions have in the application of their laws. (Hutchison v. Ross, 262 N.Y. 381, 187 N.E. 65, 89 A.L.R. 1007; Wyatt v. Fulrath, 16 N.Y.2d 169, 264 N.Y.S.2d 233, 211 N.E.2d 637, supra.) In both these cases we applied the law of a jurisdiction other than that of the marital domicile, and the appellant, in effect, urges that those cases represent the rule that, in all cases, New York will now apply the law of the situs of the intangible

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or State law. The court held that, in the absence of a clear congressional intent that Federal law govern, the Federal courts should apply the law of the marital domicile.

property, that is the law of the jurisdiction in which the documents embodying the intangible property rights are found.

We do not so read our decisions in **Wyatt** and **Hutchison,** nor, for reasons which shall be alluded to, should they be so read. The choice of law decision we must make in this case should be guided by the same considerations that have guided our decisions in other choice of law cases (Babcock v. Jackson, 12 N.Y.2d 473, 240 N.Y.S.2d 743, 191 N.E.2d 279, 95 A.L.R.2d 1; Downs v. American Mut. Liab. Ins. Co., 14 N.Y.2d 266, 251 N.Y.S.2d 19,200 N.E. 2d 204, 1 A.L.R.3d 922; Matter of Bauer, 14 N.Y.2d 272, 278, 251 N.Y.S.2d 23, 26, 200 N.E.2d 207, 209 [dissenting opinion of Fuld, J., adopted by the Legislature in Estates, Powers and Trust Law, Consol.Laws, c. 17-b, Sec. 3—5.1, subd. (g), par. (2), cl. (C)]; cf. Matter of Bulova's Estate, 14 A.D.2d 249, 220 N.Y.S.2d 541) and which were, in essence, responsible for our decisions in **Wyatt** and **Hutchison.**

The choice of law problem here should be resolved by an examination of the contacts which Louisiana and New York have with this controversy for the purpose of determining which of those jurisdictions has the paramount interest in the application of its law. As we noted in Dym v. Gordon, 16 N.Y.2d 120, 124, 262 N.Y.2d 463, 466, 209 N.E.2d 792, 794, this process requires us "first to isolate the issue, next to identify the policies embraced in the laws in conflict, and finally to examine the contacts of the re-

spective jurisdictions to ascertain which has a superior connection with the occurrence and thus would have a superior interest in having its policy or law applied." (See, also, dissenting opinion of FULD, J., in Dym v. Gordon, supra, p. 130, 262 N.Y.S.2d p. 471, 209 N.E.2d p. 797; Macey v. Rozbicki, 18 N.Y.2d 289, 292, 274 N.Y.S.2d 591, 593, 221 N.E.2d 380, 381, concurring opinion of Keating, J.)

The issue in this case is whether the community property laws of Louisiana should be applied to govern the property rights of New York domiciliaries in intangible personal property acquired during coverture. From the previous discussion, it is clear that the community property system is designed to regulate the property rights of married persons and, in particular, to protect the interest of each spouse in the property accumulated during marriage. (See United States v. Yazell, supra.) For reasons which become obvious merely in stating the purpose of the rule, Louisiana has no such interest in protecting and regulating the rights of married persons residing and domiciled in New York.

The State of New York which has such an interest has not adopted a community property system. Instead it has sought to protect a **surviving** spouse by giving her a right to take one third of the entire estate of the deceased as against a testamentary disposition by which the deceased has attempted to exclude her from a share of the estate. (Decedent Estate

Law., Sec. 18.) And, depending upon the nature of the property in the estate, a surviving spouse under New York law might well be entitled to receive a greater portion of the over-all estate than under the community property system.

By affording the surviving spouse such a right in the estate of the deceased spouse, the Legislature has sought to preserve the right of the testator to distribute his property as he desires, while at the same time to provide protection for the surviving spouse. New York, as the domicile of Martha and Powell Crichton, has not only the dominant interest in the application of its law and policy but the only interest. (See McSwain v. McSwain, 420 Pa. 86, 90-97, 215 A.2d 677.)

It is urged by the appellant that the Louisiana contacts with this case give it the paramount interest in the application of its law. Among the contacts which are urged as being significant are the facts the deceased was born in Louisiana, that, although he was domiciled in New York, the bulk of his fortune was made in Louisiana, and that the documentary evidences of his intangible property are located in that jurisdiction. Exactly how these contacts are related to the policies sought to be vindicated by Louisiana's community property laws is not made clear. The rea-

son, no doubt, is that they have no relation whatever.[8]

Up to this point we have not considered whether the Louisiana courts would, in fact, apply their own law to determine the widow's rights in the property in question. Although it would appear from the unequivocal wording of the statute that this would be the case, the previous discussion of the context in which article 2400 was enacted, as well as the pertinent Louisiana decisions in this area, leads to the conclusion that the Louisiana courts might well apply New York law. Perhaps the leading Louisiana case in this area is Williams v. Pope Mfg. Co., 52 La.Ann. 1417, 27 So. 851, 50 L.R.A. 816 [1900]. There the Supreme Court of Louisiana held that a cause of action for personal injuries suffered in Louisiana was an intangible property right which had its legal situs at the domicile of the married woman and could not be

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[8] Contacts obtain significance only to the extent that they relate to the policies and purposes sought to be vindicated by the conflicting laws. Once these contacts are discovered and analyzed they will indicate (1) that there exists no true conflict of laws, as in the case at bar and as in most choice of law cases, or (2) that a true conflict exists, i. e., both jurisdictions have an interest in the application of their law. In the former case, of course, the law of the jurisdiction having the only real interest in the litigation will be applied. (Babcock v. Jackson, supra; Macey v. Rozbicki, supra; Oltarsh v. Aetna Ins. Co., 15 N.Y.2d 111, 256 N.Y.S.2d 577, 204 N.E.2d 622.) In the case of a conflict, while our decisions have normally resulted in application of forum law (Wyatt v. Fulrath, 16 N.Y.2d 169, 264 N.Y.S.2d 233, 211 N.E.2d 637, supra), we are not as yet prepared to formulate what may be deemed a rule of general application but prefer rather to give further consideration to the question as the cases arise (See Currie, The Disinterested Third State, 28 Law & Contemp.Prob., 754, 756-764.)

said to have been property acquired in Louisiana. Therefore, the plaintiff wife, a nonresident of Louisiana, was permitted to sue instead of her husband. In discussing the basis of its decision the court wrote (p. 1441, 27 So. p. 861): "[The cause of action] is to be treated and considered as personal property, its legal situs is at the matrimonial domicile of the plaintiff in the state of Mississippi, and for that reason cannot be considered as a community asset with its domicile in the state of Louisiana; and, being a debt, or chose in action, it belongs and attaches to the person of the plaintiff, follows her wherever she goes, and possesses no other situs than as she is pleased to give it."

This case was distinquished in a later decision of the Louisiana Supreme Court. The court appeared to indicate that the basis of the decision was not that article 2400 was inapplicable but rather that it would not be applied where the domiciliary law was not inimical to the policy of the State of Louisiana. (Matney v. Blue Ribbon, Inc., 202 La. 505, 12 So.2d 253 [1942].)

The application of New York law to the facts in this case could hardly be said to be inimical to the policy of Louisiana. The protection afforded the wife under our law certainly makes adequate provision for her financial security. Indeed, as noted earlier, it can even result in the wife's receiving a greater interest in the estate of the deceased than under Louisiana law.

Therefore, whether **Williams** or **Matney** are regarded as controlling, a rather strong argument can be made that the Louisiana courts, under these circumstances, would not apply article 2400.

The remaining Louisiana cases in this area are generally conflicting[9] and their over-all effect has led one of the leading commentators on the Louisiana community property system to conclude that "the question of the application of [article] 2400 to personal property may be said to be unsettled." (Daggett, Community Property System of Louisiana 113 [1945]; see, also, Marsh, Marital Property in Conflict of Laws 197-201 [1952]; Neuner, Marital Property and the Conflict of Laws, 5 La.L.Rev. 167, 170 [1943].)

The unsettled nature of Louisiana law, along with the fact that the deceased could have given his spouse by will in New York the same benefits she would have been entitled to under Louisiana law, refute the contention that the defendant, in leaving his property in Louisiana, intended to vest in a woman from whom he had been separated for nearly 30 years a right to one half of his personal estate accumulated solely through his own effort and labor. For this reason and because of the differing governmental interests involved, this case is distinquishable from Hutchison v. Ross, 262 N.Y. 381, 187 N.E. 65, 89 A.L.R. 1007, supra, and Wyatt v. Fulrath, 16 N.Y.2d 169, 264

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9 See footnote 4 supra.

N.Y.S.2d 233, 211 N.E.2d 637, supra, relied upon by the appellant in support of her argument for the application of Louisiana law.

In the latter case, a married couple domiciled in Spain—a nation having a community property system similar to that of Louisiana—placed cash and securities in New York for safekeeping and investment. A substantial portion of this property was placed with New York custodians in joint accounts. The husband and wife either expressly agreed in writing that the New York law of survivorship would apply or agreed to a written form of survivorship account conformable to New York law.

Relying upon sections 12-a of the Personal Property Law, Consol.Laws, c. 41, and 47 of the Decedent Estate Law, which are designed to encourage investment of funds in this State by permitting a nondomiciliary to designate New York law as applicable to determine questions of law relating to testamentary dispositions of personal property located here as well as **inter vivos** trusts having a situs in this State, we held that New York law and not the Spanish community property laws would govern. In so doing, we cited the earlier case of Hutchison v. Ross (supra) in which the court, speaking through Judge Lehman, relying upon section 12-a of the Personal Property Law, held that it was the policy of this State to permit out-of-State settlors of trusts to designate that rights in that property be determined by New York law.

In both these cases we were giving effect to New York's policy and governmental interest. That this was our only concern is evidenced by the fact that in **Wyatt** we did not apply New York law to intangible personal property which had a situs in England and which had been removed to this State after the decedent's death, but deferred to whatever interest that jurisdiction might have by indicating that its whole law—local law and choice of law rules—should govern. "The reasons **grounded on New York policy** and affected by the physical transfer of the property to New York during the lifetime of the spouses **and** by their directions relating to it do not necessarily apply to property of Spanish nationals placed in a third country during their lifetime." (Wyatt v. Fulrath, supra, p. 175, 264 N.Y.S.2d p. 237, 211 N.E.2d p. 640; emphasis added.)

In situations such as that present in this case, where the foreign jurisdiction has no interest in the application of its law, where there was no clear expression of intent that foreign law govern[10] and where we have the power to apply our own law and give effect to the policy this State has adopted in regulating the rights of married persons we should apply our own law.

The order appealed from should be affirmed, with costs to all parties appearing and filing separate briefs payable out of the estate.

FULD, C. J., and VAN VOORHIS, BURKE, SCILEPPI, BERGAN and BREITEL, JJ., concur.

Order affirmed.

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No. [redacted] 362

IN THE

Supreme Court of the United States

OCTOBER TERM, [redacted] 1970

MRS. MARTHA BAILEY CRICHTON,

Petitioner

v.

SUCCESSION OF POWELL CRICHTON (MISS MARGARET S. HEMINGWAY, ANCILLARY TESTAMENTARY EXECUTRIX), MRS. GLORIA CRICHTON McGEHEE, and POWELL CRICHTON, JR.,

Respondents

PETITION FOR A WRIT OF CERTIORARI TO THE COURT OF APPEAL, SECOND CIRCUIT, STATE OF LOUISIANA, OR, IN THE ALTERNATIVE, TO THE SUPREME COURT OF LOUISIANA

R. L. CURRY, III
THOS. W. LEIGH
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NO._____

IN THE

SUPREME COURT OF THE UNITED STATES

OCTOBER TERM, 1969

MRS. MARTHA BAILEY CRICHTON,
Petitioner

v.

SUCCESSION OF POWELL CRICHTON
(MISS MARGARET S. HEMINGWAY,
ANCILLARY TESTAMENTARY EXECUTRIX),
MRS. GLORIA CRICHTON McGEHEE, and
POWELL CRICHTON, JR.,
Respondents

PETITION FOR A WRIT OF CERTIORARI TO THE COURT OF APPEAL, SECOND CIRCUIT, STATE OF LOUISIANA, OR, IN THE ALTERNATIVE, TO THE SUPREME COURT OF LOUISIANA

This is a petition by MRS. MARTHA BAILEY CRICHTON for a writ of certiorari to review a decision of the Court of Appeal for the Second Circuit of Louisiana affirming a judgment entered in the above case by the 26th District Court for Webster Parish, Louisiana, or, in the alternative, to review the order and judgment of the Supreme Court of Louisiana dated April 20, 1970, by which that Court refused to issue a writ of certiorari or review.

OPINIONS OF THE COURTS BELOW

The opinion of the Court of Appeal for the Second Circuit, State of Louisiana, dated January 6, 1970 (rehearing denied March 3, 1970) which is herein sought to be reviewed is reported in **232 So. 2d 109.** Application to the Supreme Court of Louisiana for a writ of certiorari to review this opinion was refused by that Court on April 20, 1970. Such refusal is not yet reported.

Germane also to this petition are the opinion and decision of the New York Surrogate dated March 9, 1966 **(In Re Crichton's Will, 49 Misc. 2d 405, 267 N. Y. S. 2d 706)** and his final order dated March 17, 1966, and the affirming opinion of the New York Court of Appeal **(In Re Estate of Crichton, 20 N. Y. 2d 124, 281 N. Y. S. 2d 811, 228 N. E. 2d 799.)**

Pursuant to **Paragraph 1 (i) of Rule 23 of the Rules of this Court,** copies of: the judgment entered in the District Court (Appendix, pages 1a-15a); the opinion of the Court of Appeal sought to be reviewed (Appendix, pages 16a-31a); the order denying petition for rehearing (Appendix, page 32a); the order of Supreme Court of Louisiana denying certiorari (Appendix, page 33a); the opinion and decision of the New York Surrogate dated March 9, 1966 (Appendix, Pages 34a-47a); final order of the New York Surrogate dated March 17, 1966 (Appendix, pages 48a-53a); and the affirming opinion of the New York Court of

Appeal (Appendix, pages 54a-72a), are set forth in a separately bound appendix.

JURISDICTIONAL STATEMENT

The decision sought to be reviewed was entered by the Court of Appeal for the Second Circuit, State of Louisiana, on January 6, 1970; a rehearing was refused by that Court on March 3, 1970; and petitioner's application to the Supreme Court of Louisiana for a writ of certiorari to review the judgment of the Court of Appeal was refused on April 20, 1970. By the refusal of the Supreme Court (the highest Court in Louisiana) to review the opinion of the Court of Appeal, that judgment became final on April 20, 1970.

Jurisdiction of this Court to review the judgment complained of by means of a writ of certiorari to the Court of Appeal for the Second Circuit of the State of Louisiana or in the alternative to the Supreme Court of Louisiana is conferred by **28 U. S. C. Sec. 1257, Paragraph (3).**

QUESTIONS PRESENTED

Is it consistent with the Due Process and Equal Protection clauses of the Fourteenth Amendment for property rights accorded to a non-resident widow by the laws of the forum state, in intangible movables situated within the forum state and under the jurisdiction of its Courts, to be divested and ownership thereof transferred to the succession of the deceased

husband by according full faith and credit to an adverse foreign judgment?

Is it consistent with the Due Process and Equal Protection clauses of the Fourteenth Admendment for a forum court to be concluded by a foreign court's assumption of jurisdiction over intangible movables situated in the forum state and protected against removal therefrom by the injunctive process of the forum court?

CONSTITUTIONAL PROVISIONS INVOLVED

The pertinent provisions of the United States Constitution which are here involved are:

Article IV, Section 1:

"Full Faith and Credit shall be given in each State to the public Acts, Records, and judicial Proceedings of every other State. * * * "

Amendment XIV, Section 1:

" * * No State shall make or enforce any law which shall abridge the privileges or immunities of citizens of the United States; nor shall any State deprive any person of life, liberty, or property, without due process of law; nor deny to any person within its jurisdiction the equal protection of the laws."

STATEMENT OF THE CASE

Powell Crichton, a native of Louisiana, migrated to New York in 1910, became a member of the New York Bar, resided there for the remainder of his life and died testate in that State on November 15, 1962. He was married twice and sired a son and a daughter

by each marriage. His first wife died in 1923 and he was married the second time in 1925 to Mrs. Martha Bailey Crichton, who survives him and is the Petitioner herein.[1]

Respondents are Mrs. Gloria Crichton McGehee and Powell Crichton, Jr., the children of the first marriage.[2]

By Mr. Crichton's will, certain trusts were created, the income from which is payable to his four children in varying proportions. No provision was made for petitioner, his surviving widow, nor did petitioner exercise any right to take against the will as permitted by the laws of New York.

Following Mr. Crichton's death, his will was admitted to probate in the Surrogate's Court of Westchester County, New York and Miss Margaret Hemingway, the testamentary executrix named therein, qualified in that court on February 11, 1963. Later, ancillary probate proceedings were instituted in the 26th District Court of Webster Parish, Louisiana, and ancillary letters testamentary were issued to the domiciliary executrix on April 28, 1964.

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1 Petitioner and decedent were separated in 1935 and lived separate and apart until his death. That fact, however, is immaterial to the questions here presented, since it does not affect her rights under the community property laws of Louisiana. See **Joffrion v. Bordelon 14 La. Ann. 618.**

2 Kate Crichton and Edward Bailey Crichton, issue of the second marriage, were made parties to this litigation, but have acquiesced in the claims of their mother, Petitioner herein.

Mr. Crichton's estate consists principally of intangible movables (bank deposits, U. S. Treasury bonds, corporate stocks, etc,), **all of which are situated in Louisiana and all of which were acquired during the period of his marriage to Petitioner.**

Article 2400 of the Revised Civil Code of Louisiana provides as follows:

> "All property acquired in this state by nonresident married persons, whether the title thereto be in the name of either the husband or wife, or in their joint names, shall be subject to the same provisions of law which regulate the community of acquets and gains between citizens of this state."

and consistent with the provisions of this Article, the intangible personal properties (which are the subject of this litigation) were inventoried as belonging to the community of acquets and gains existing between decedent and petitioner as his surviving widow.[3]

Thereafter, petitioner, as decedent's surviving widow in community, filed a petition in the Louisiana Court asking to be placed in possession of her interest in the community property. She also sought a temporary restraining order and a preliminary injunction to prevent the removal of these properities from the State. Respondents appeared through counsel and excepted to the jurisdiction of the Louisiana courts to

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[3] Certain items of real estate were also inventoried as community property but the New York Court made no attempt to adjudicate title thereto.

pass upon the ownership of the intangible movable properties described in the inventory, on the grounds that such properties had their situs at the domicile of the decedent in New York.

At a hearing on August 11, 1965, Petitioner's request for a preliminary injunction was granted, and on December 8, 1965, an order was entered overruling Respondents' exception to the jurisdiction. On January 4, 1966, judgment was signed overruling Respondents' exceptions and granting Petitioner a permanent injunction as previously prayed for. The case was fixed for trial on April 14, 1966.

In the meantime, Respondents were carrying forward litigation with the domiciliary executrix in the Surrogate's Court of Westchester County, New York. In response to a demand filed by Mrs. Gloria Crichton MeGehee, one of the Respondents, the domiciliary executrix filed an intermediate account in the New York Court on September 20, 1965 in which she set forth as unpaid Petitioner's claim for one-half of the community property amounting to some $156,000.00.

On December 2, 1965 Mrs. McGehee filed objections to the allowance of the community property claim on the grounds that 1) Louisiana's community property laws were inapplicable, 2) under Louisiana law the claim was invalid, and 3) the widow had no

rights except to take against the will by intestacy, a right which she had not chosen to exercise.

Petitioner appeared in that court and filed objection to the inclusion in the account of items being accounted for in Louisiana on the grounds that 1) they were being held by Margaret Hemingway as ancillary executrix in Louisiana and had not come into her hands as domiciliary executrix ,and 2) the Louisiana courts had enjoined the ancillary executrix from removing or disposing of those items.

On a motion for partial summary judgment filed by Mrs. McGehee, the Surrogate held that Louisiana law had no application and that Petitioner, as decedent's widow, acquired no community property rights in decedent's personal property. He refused to recognize the applicability of **Louisiana's Revised Civil Code, Article 2400,** to the incorporeal movables here involved and sustained Mrs. McGehee's objection to the allowance of Petitioner's claim for community property. This judgment, rendered on March 17, 1966, was subsequently affirmed by the Supreme Court, Appellate Division (Second Department)[4] and by the Court of Appeals of New York, which is the highest court of that State.[5]

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[4] **In the matter of the Will of Powell Crichton, Deceased (1966) 26 A. D. 2d 639, 272 N. Y. S. (2d) 987.**

[5] **In Re Estate of Crichton (1967) 20 N. Y. 2d 124, 281 N. Y. S. 2d 811, 228 N. E. 2d 799.**

Thereafter, by motion for partial summary judgment filed on March 23, 1966 some three weeks before the trial date which had been fixed by the Louisiana court, Respondents sought recognition of the New York Surrogate's decree in the ancillary proceedings in Louisiana, claiming full faith and credit for this decree under **Article IV of Section 1 of the United States Constitution.** The Trial Court denied that motion on May 4, 1966 and supervisory writs were denied by the Louisiana Court of Appeal for the Second Circuit and by the Louisiana Supreme Court[6] on the grounds that an adequate remedy existed by appeal.

The Louisiana litigation was refixed for trial and tried on December 12, 1966 and was submitted on briefs to be filed by both parties litigant. While the Louisiana case was being held under advisement, the New York case was affirmed by the New York Court of Appeal on June 1, 1967, and on February 13, 1969, some twenty months later, the Louisiana Court rendered judgment in which it reversed its previous ruling on Respondents' motion for summary judgment and held that the judgment of the New York Surrogate, as affirmed by the New York Court of Appeal, was entitled to full faith and credit under the United States Constitution and constituted res judicata of all issues involved in this litigation.

On appeal, the Louisiana Court of Appeal for the

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6 **249 La. 571, 187 So. (2d) 738.**

Second Circuit held on January 6, 1970 that:

> " . . . we are bound to accord full faith and credit to the judgment of the Court of Appeal of the State of New York as a final decision between the parties regardless of whether or not the Courts of Louisiana would have reached the same results."

The Court added, however that:

> "The full faith and credit clause, however, does not require that we agree with another court's interpretation of one of our statutes. The interpretation placed upon Article 2400 is incorrect and the conclusion reached is repugnant to our law.",

and concluded:

> "In view of the clear language of Article 2400 and the preceding authorities, we are convinced that Mrs. Crichton was entitled as a substantive right to a one-half interest in the movable property left by the deceased under Louisiana law. However, as a consequence of the Full Faith and Credit clause of the Federal Constitution, we are bound to hold that the judgment of the State of New York is entitled to res judicata effect in Louisiana."

After a rehearing had been refused by the Court of Appeal — with the Presiding Judge dissenting — application for review was made to and denied by the Supreme Court.

RAISING OF FEDERAL QUESTIONS

The federal questions herein sought to be reviewed are inherent in Respondents' reliance upon the Full Faith and Credit clause of the United States Constitution to divest Petitioner's ownership of an interest in the properties here in dispute.

This constitutional provision was invoked by Respondents in the court of first instance in Louisiana by means of their motion for partial summary judgment filed following the rendition by the Surrogate of Westchester County, New York of his judgment of March 17, 1966.

The federal questions then at issue were decided in favor of Petitioner, and the trial Court's later reversal of this holding and its final sustaining of Respondents' motion for summary judgment were made without previous warning to Petitioner and without opportunity given for re-argument of these constitutional issues.

On appeal to the Court of Appeal for the Second Circuit, Petitioner in her brief raised the point of due process in the following language:

> " . . . it is clear that if the law in New York can be invoked to transfer from Mrs. Crichton to the estate of her deceased husband, her one-half interest in the revenues from land in Louisiana which are hers under the law of this State, then the New York law, in effect, deprives her of rights vested in her under the law of Louisiana without any semblance of due process of law."

In Petitioner's application for rehearing made to the Court of Appeal, Petitioner re-urged these constitutional questions and in her brief in support of that application it was pointed out:

> "It is thus clear that for this Court to accord full faith and credit to the New York judgment here relied upon by appellees, and in so doing to divest Mrs. Crichton of the owership

and enjoyment of property to which she is entitled under the substantive laws of Louisiana, is nothing short of confiscation, effectively deprives this appellant of her property without due process of law, and denies to her the equal protection of the laws, all in contravention of the Fourteenth Amendment to the United States Constitution."

The conflict with the Due Process clause of the Constitution resulting from the Court's application of the Full Faith and Credit clause was urged upon the Supreme Court of Louisiana in an assignment of error made in Petitioner's application to that Court for a writ of certiorari in the following language:

"The Court of Appeal erred inter alia: . . . . 4) in permitting Mrs. Crichton to be deprived of her property without due process of law and in denying to her the equal protection of the laws — all in violation of the Fourteenth Amendment to the Constitution of the United States."

Although the opinion of the Court of Appeal appearing in the Appendix does not specifically pass upon the constitutional questions here sought to be reviewed, nevertheless these questions were timely and properly raised at every stage of this litigation so as to give this Court jurisdiction to review the judgment on writ of certiorari.

REASONS FOR GRANTING THE WRIT

Presented here is a direct conflict between the Full Faith and Credit clause of the United States Constitution, as it has been applied in the opinion sought to be reviewed, and the Due Process and Equal Protection clauses of the Fourteenth Amendment.

Is it consistent with due process for a forum court blindly to accept a foreign court's assumption of jurisdiction over the res and accord full faith and credit to such court's judgment which divests property rights previously vested by the law of the forum state?

In the opinion here sought to be reviewed, the Louisiana Court of Appeal held that by virtue of the Full Faith and Credit clause of the Constitution, the judgment of the New York Court denying Petitioner any rights under the community property laws of Louisiana and under **Article 2400 of the Louisiana Revised Civil Code,** is entitled to res judicata effect in the Louisiana Court.

At the same time the Court held that under **Article 2400 of the Louisiana Revised Civil Code,** the properties in litigation, having been acquired in this State during the existence of the marriage between Petitioner and her deceased husband, were subject to the same provisions of law which regulate the community of acquets and gains between citizens of Louisiana, and as a consequence that Petitioner was entitled as a substantive right to a one-half interest therein.

These holdings are mutually irreconcilable.[7]

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[7] It will not do to say, as did Judge Dixon in his concurring opinion, that the former holding is decisive of the case, and that the latter holding is merely dictum. For if the result which would be reached under the Louisiana law were not different from that

Here, the Louisiana court's blind acceptance of the New York court's assumption of jurisdiction over the res is in direct conflict with decisions of this court.

In **Clark v. Williard (1935) 294 U. S. 211, 79 L. Ed. 865, 55 S. Ct. 356, 98 A.L.R. 347,** this Court observed (98 A.L.R. p. 351):

> " * * Iowa may say that one who is a liquidator with title, appointed by her statutes, shall be so recognized in Montana, with whatever rights and privileges accompany such recognition according to Montana law. * * * **Iowa may not say, however, that a liquidator with title who goes into Montana may set at naught Montana law as to the distribution of Montana assets,** and carry over into another state the rule of distribution prescribed by the statutes of the domicile." (Emphasis supplied)

In **Hanson v. Denckla (1958) 357 U. S. 235, 2 L. Ed. 2d 1283, 75 S. Ct. 1228,** this Court held (2 L. Ed. 2d p. 1293):

> "Founded on physical power, * * the in rem jurisdiction of a state court is limited by the extent of its power and by the coordinate authority of sister states. The basis of the jurisdiction is the presence of the subject property within the territorial jurisdiction of the forum State. * * Tangible property poses no problem for the application of this rule, but the situs of intangibles is often a matter of controversy. In considering restrictions on the power to tax, this Court has concluded that 'jurisdiction' over intangible property is not

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reached by the New York courts, there would be no occasion for the application of the Full Faith and Credit clause. And if, as held by the marjority of the Court, Article 2400 subjects the property of these two married persons, acquired in Louisiana, to the same provisions of law which regulate the community of acquets and gains between citizens of Louisiana, then Petitioner must be accorded the same rights in community property as are enjoyed by citizens of Louisiana.

limited to a single State * * Whether the type of 'jurisdiction' with which this opinion deals may be exercised by more than one State we need not decide. The parties seem to assume that **the trust assets that form the subject matter of this action were located in Delaware and not in Florida.** We can see nothing in the record contrary to that assumption, or sufficient to establish a situs in Florida." (Emphasis supplied)

If it were simply a question of determining **prospectively** the issue of title to these intangible movables as betwen Petitioner and the succession of her deceased husband, full faith and credit might constitutionally have been accorded to the New York Court's determination of that issue, and the question presented by this application would not have arisen.

But that is not the case here.

As noted by the Surrogate,[8] petitioner's appearance in his court was for the purpose of objecting to the inclusion in the Domiciliary Administrator's account of the items being accounted for in Louisiana on the grounds "that (1) they are held by Margaret S. Hemingway solely as ancillary executrix in Louisiana and have not come into her hands as domiciliary executrix, and (2) the Louisiana court has enjoined the ancillary executrix from removing or disposing of those items."

Under the law of Louisiana the ownership of a one-half interest in the community property vests in

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8 See Appendix, page 37a.

the wife immediately upon its acquisition;[9] and while under Louisiana law the husband, as head and master of the community retains the right to manage and even alienate assets of the community, nevertheless the death of Powell Crichton effected a dissolution of the community and vested in Petitioner the further right to possession of the community interest of which she already enjoyed the ownership.

Thus, it is clear that the Full Faith and Credit clause as applied by the Louisiana Court of Appeal has been made to operate **retroactively** and to divest Petitioner of rights of ownership and possession in these properties which had already vested in her under the law of the forum state where the properties were, in fact, situated.

Clearly, the result which has here been reached with respect to these intangible movable properties could not have been reached if the properties had been immovables. This was recognized by the New York Court and the Louisiana immovables were excluded from its consideration.

Whether such a result is precluded with respect

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9 See **Succession of Helis (1954) 226 La. 133, 75 So. (2d) 221,** wherein it was held that:

"Despite loose expressions in some of the decisions to the contrary, ever since Dixon v. Dixon's Executors, 4 La. 188, was decided in 1832, **title to one-half of the community property from the very moment of its acquisition is, under our civil law system, vested in the wife** irregardless in whose name acquired." (Emphasis supplied)

to intangible movables situated in the forum state has not, so far as we have been able to determine, been heretofore decided by this Court.

The question here presented is one of vital concern to the public.

For, if the Full Faith and Credit clause of the Constitution can be applied in one case so as to effect a divestiture of vested rights in intangible movable properties and to deny to a non-resident rights which under the law of the forum state are accorded to domiciliaries, then that clause can be so applied in other cases and the guarantees afforded by the Fourteenth Amendment will be rendered nugatory.

In **Pink v. A. A. A. Highway Express, Inc. (1941) 314 U. S. 201, 86 L. Ed. 152,** this Court, in discussing the application of the Full Faith and Credit clause of the Constitution, pointed out (p. 210):

> "It was the purpose of that provision to preserve rights acquired or confirmed under the public acts and judicial proceedings of one state by requiring recognition of their validity in others. But the very nature of the federal union of states, to each of which is reserved the sovereign right to make its own laws, precludes resort to the Constitution as the means for compelling one state wholly to subordinate its own laws and policy concerning its peculiarly domestic affairs to the laws and policy of others. **When such conflict of interest arises it is for this Court to resolve it by determining how far the full faith and credit clause demands the qualification or denial of rights asserted under the laws of one state, that of the forum, by the public acts and judicial proceedings of another.** See Alaska Packers Asso. v. Industrial Acci. Commission,

294 U.S. 532, 547, 79 L. ed. 1044, 1052, 55 S. Ct. 518; Pacific Employers Ins. Co. v. Industrial Acci. Commission, 306 U. S. 493, 83 L. ed. 940, 59 S. Ct. 629." (Emphasis supplied)

We submit that the public interest requires a resolution by this Court of the question here presented.

CONCLUSION

For the foregoing reasons, this petition for writ of certiorari should be granted.

Respectfully submitted,

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IN THE

SUPREME COURT OF THE UNITED STATES

OCTOBER TERM, 1970

No. 262

MRS. MARTHA BAILEY CRICHTON,
Petitioner,

v.

SUCCESSION OF POWELL CRICHTON (MISS MARGARET S. HEMINGWAY, ANCILLARY TESTAMENTARY EXECUTRIX), MRS. GLORIA CRICHTON McGEHEE and POWELL CRICHTON, JR.,
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30A Am. Jur., Judgments, § 241, p. 310 12

30A Am. Jur., Judgments, § 253, p. 320 16

20 Am. Jur. 2d, Courts, § 137, p. 486 19

Annotation: "Judgment as Res Judicata Pending Appeal on Motion for a New Trial, or During the Time Allowed Therefor," 9 A. L. R. 2d 984 6

Comment: "Marital Property and the Conflict of Laws," 5 Louisiana Law Review 167 (1942-44) 37

41 C. J. S., Husband and Wife, § 466, p. 991 38

41 C. J. S., Husband and Wife, § 466, p. 992 33

50 C. J. S., Judgments, § 689 27

50 C. J. S., Judgments, § 701, p. 157 6

Daggett, The Community Property System of Louisiana (1949) 37

Huie, "Separate Claims to Reimbursement from Community Property in Louisiana," 27 Tulane Law Review 143 (1958) 5

Restatement of Conflict of Laws,

§ 51, Comment b 19

§ 290 33

§ 470 19

Stumberg, Conflict of Laws (2d ed. 1951), p. 314 34

Stumberg, Principles of Conflict of Laws (3d ed. 1963), p. 117 16

IN THE

SUPREME COURT OF THE UNITED STATES.

OCTOBER TERM, 1970

No. 262

MRS. MARTHA BAILEY CRIGHTON,
Petitioner,

v.

SUCCESSION OF POWELL CRICHTON (MISS MARGARET S. HEMINGWAY, ANCILLARY TESTAMENTARY EXECUTRIX), MRS. GLORIA CRICHTON McGEHEE and POWELL CRICHTON, JR.,
Respondents.

Brief of Respondents Mrs. Gloria Crichton McGehee and Powell Crichton, Jr. in Opposition to Petition for Writ of Certiorari

INTRODUCTION

Petitioner here attempts under the guise of due process and equal protection to compel the courts of Louisiana to refuse full faith and credit to a final judgment of the highest court of New York determining her marital rights to intangible personal properties of her husband's estate.

At his death the decedent, a New York domiciliary, was possessed of money in Louisiana banks, and stocks, bonds and other intangibles the physical evidence of which was in the hands of a Louisiana agent. The case, as originally presented to the courts of New York and Louisiana during the administration of the estate, was concerned with whether the law of the decedent's domicile (and of the matrimonial domicile), on the one hand, or the community property law of Louisiana, on the other, should properly govern the widow's rights with respect to the intangibles. But the question as so presented is no longer pend-

ing anywhere. In a proceeding fought tooth and nail between the present litigants and concluded more than three years ago in the New York courts, the choice of law issue was resolved against Petitioner. The New York courts had jurisdiction of the subject matter and *in personam* jurisdiction of the litigants. The matter then became, in Louisiana, one involving routine application of the Full Faith and Credit Clause of the Constitution. The Louisiana courts, following long-standing jurisprudence of this Court, gave recognition to the New York judgment—and there the matter should end.

Because the widow has sought to invoke Fourteenth Amendment guarantees as her foothold in this Court, brief comment is necessary as to the statement in her Petition of the constitutional provisions involved, the question presented and the manner in which her purported federal questions were raised in the courts below.

CONSTITUTIONAL PROVISION PRESENTED

We submit that the only provision of the United States Constitution which this case involves is the Full Faith and Credit Clause:

Article IV, Section 1

"Full faith and credit shall be given in each state to the public acts, records and judicial proceedings of every other state * * *"

QUESTION PRESENTED; RAISING OF FEDERAL QUESTIONS

The Petition for certiorari describes the questions presented as being ones of due process and equal protection. We emphatically disagree. As we shall show, Petitioner's invocation of federal due process came almost as an

afterthought in the Louisiana court whose decision is sought here to be overturned.

As we understand the Petition, it is the effect of the New York decision which Petitioner claims offends her constitutional rights. Yet we find no indication whatever that these so-called federal questions of due process and equal protection were raised in any manner at any of the three levels of the New York court system in which the case was heard; and obviously no effort was made to seek certiorari in this Court following the decision of the New York Court of Appeals.[1]

This Court will find that Petitioner received full measure of due process by her active participation in the New York proceedings, and that, having lost there, what she then sought in Louisiana was not due process but a second bite at the apple—exactly what the Full Faith and Credit Clause forbids. Therefore, the true question presented in this Court may be fairly stated as:

> SHOULD THE UNITED STATES SUPREME COURT OVERTURN THE RECOGNITION BY ONE STATE, PURSUANT TO THE FULL FAITH AND CREDIT CLAUSE, OF A FINAL JUDGMENT OF A SISTER STATE DETERMINING THE OWNERSHIP OF INTANGIBLE PERSONAL PROPERTY IN A PROCEEDING IN WHICH ALL PARTIES ACTIVELY PARTICIPATED AND IN WHICH THE COURT DETERMINED THAT IT HAD JURISDICTION OF THE SUBJECT MATTER?

STATEMENT OF THE CASE

The facts are largely undisputed, and the statement of them in the Petition for certiorari is essentially correct. However, since that statement assumes as true certain

[1] See further discussion of Petitioner's failure to raise substantial federal questions at pages 28-31, *infra*.

factual matters which are in dispute, and since it overemphasizes certain aspects of the case to the exclusion of others, we choose to begin with a factual statement and some prefatory comment on the procedural picture at this juncture.

The decedent, Powell Crichton, died on November 15, 1962, while a domiciliary and resident of Westchester County, New York (R. 17, 19).[2] He was survived by his wife, Mrs. Martha Bailey Crichton (Petitioner), who resides in Bermuda (and from whom he had been separated for more than twenty-five years), by two children of his marriage to her, Kate Crichton and Edward Bailey Crichton, and by two children of a prior marriage, Powell Crichton, Jr. and Mrs. Gloria Crichton McGehee (Respondents) (R. 13, 17, 28). He died testate, and his will, dated November 13, 1953, was admitted to probate in the Surrogate's Court of Westchester County, New York. Margaret S. Hemingway, the testamentary executrix, qualified in that court on February 11, 1963 (R. 32, 33). On August 20, 1963, an ancillary probate proceeding was opened in Webster Parish, Louisiana (R. 12, et seq.), and, some nine months later, on April 28, 1964, letters testamentary were issued to Miss Hemingway by the Louisiana Court (R. 73).

On the same day that she received letters of administration, the executrix filed in the Louisiana District Court an inventory purporting to describe and value the properties owned by the decedent in the State of Louisiana (R. 51, et seq.). In addition to interests in numerous tracts of land, the inventory included various intangible personal properties identified as being community property of the decedent's second marriage. Within that category were listed bank deposits, United States Treasury certificates, corporate stock, a cash balance held by a Louisiana agent

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[2] Page references are to the record of the proceeding in the Louisiana Court of Appeal, Second Circuit, from the decision of which court Petitioner seeks certiorari here.

and a partnership interest in a hardware business (R. 67, et seq.).

Respondents, the children of the first marriage, excepted to the jurisdiction of the court to pass upon the ownership of the intangible movable properties described in the inventory, on the ground that those properties had their situs at the domicile of the decedent in New York (R. 125, 140). The same children also tendered answers to the rule to approve the inventory brought by the executrix, reiterating the lack of jurisdiction, and asserting the applicability of New York law (R. 128, 132). In the alternative, the answer pleaded that, even if Louisiana law should be applied, the decedent's separate estate was owed an indebtedness by the community equal to the inventoried value of the personal properties.[3]

In connection with the rule to approve the inventory, the widow, Martha Bailey Crichton, petitioned for possession of an undivided one-half interest in the property inventoried as community, both real and personal (R. 108). The widow also sought and obtained an injunction prohibiting the executrix from transferring the assets out of the State of Louisiana pending adjudication of her claims (R. 118, 157, 163).

On January 4, 1966, the district court overruled the jurisdictional exceptions filed by Respondents (R. 163).

Meanwhile, matters were progressing in New York. The executrix had filed an intermediate account in the proceedings there, in which it was proposed that the widow be paid some $156,000.00 as her share of Louisiana com-

[3] In Louisiana, dissolution of the community (by death, divorce or legal separation) often requires an accounting between the community estate and the separate estates of one or both spouses. See, for example, *Huie*, "Separate Claims to Reimbursement from Community Property in Louisiana," 27 *Tulane Law Review* 143 (1953).

munity property. The account was opposed by Respondents, in much the same way, procedurally, that they opposed the inventory in the Louisiana proceedings (R. 175, et seq.).

On March 17, 1966, shortly before the date then set for trial of the factual issues (that is, the demand for an accounting by the former community to the decedent's separate estate) involved in the Louisiana proceedings, the New York Surrogate's Court handed down a decision, *in a proceeding held contradictorily with the widow* and the executrix, decreeing that the law of New York governed the rights of the widow, that the Court *had jurisdiction* over her *person* and over the *subject matter*, and that she had no claim whatever to any intangible personal properties of the estate, including, specifically, the personal properties inventoried in the Louisiana succession (R. 175-192).[4]

By motion for partial summary judgment, Respondents immediately sought recognition of the New York decree in the ancillary proceedings in Louisiana under Article IV, Section 1, of the United States Constitution, the Full Faith and Credit Clause (R. 170, et seq.).[5] The district court denied that motion on May 4, 1966 (R. 212), and supervisory writs were refused by the Louisiana Court of Appeal, Second Circuit (R. 218), and by the Louisiana Supreme Court (R. 219) on the ground that an adequate remedy could later be had by appeal.

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[4] *In Re Crichton's Will*, 49 Misc. 2d 405, 267 N. Y. S. 2d 706 (1966) (App. p. 34a).

[5] The judgment of the New York Surrogate's Court, though subject to appeal, was a final judgment for res judicata purposes under New York law. 50 C. J. S., *Judgments*, § 701, p. 157; *Bell v. Bell*, 17 N. Y. S. 2d 692 (1939), affirmed 16 N. Y. S. 2d 1018 (1939); *Parkhurst v. Berdell*, 110 N. Y. 386, 18 N. E. 123 (1888); *Annotation*, 9 A. L. R. 2d 984, 1000.

On July 5, 1966, the Appellate Division of the Supreme Court of New York *unanimously affirmed* the judgment of the Surrogate rejecting the widow's claim,[6] and, on June 1, 1967, the New York Court of Appeals likewise *unanimously affirmed*, finding that New York had the dominant interest in the marital property rights of its domiciliaries and concluding, moreover, that the Louisiana courts very likely would have applied New York law had the choice of law problem been presented to them.[7]

The trial in Louisiana took place on December 12, 1966. At the trial and in briefs subsequently filed in the district court, Respondents again urged that the only issue was one of full faith and credit and that, even if the court should fail to recognize that it was compelled to accept the New York judgment as determinative, it should itself apply the law of New York as enunciated in the opinion of the New York Court of Appeals. With full reservation of their rights, Respondents then introduced proof in the form of accounting testimony and exhibits to the effect that the decedent's Louisiana assets, despite changes in form and commingling of funds, were basically capital in a family business which had been inherited from the decedent's parents and hence were not community property (R. 310, et seq.).[8] The widow also produced accounting testimony on this question (R. 335, et seq.).

On February 13, 1969, the Louisiana court recalled its earlier ruling (on Motion for Partial Summary Judgment)

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[6] *In the Matter of the Will of Powell Crichton, Deceased*, 26 A. D. 2d 639, 272 N. Y. S. 2d 987 (1966).

[7] *In Re Estate of Crichton*, 20 N. Y. 2d 129, 281 N. Y. S. 2d 811, 228 N. E. 2d 799 (1967). (App. p. 54a).

[8] We disagree with the statement on page 6 of the Petition that all of the properties in question were acquired during the decedent's marriage to Petitioner.

and held that the New York proceeding was res judicata of the issues and was entitled to full faith and credit.[9] The court went on to say that the matter had been properly resolved by the application of *New York* law (R. 238, et seq.).

On appeal the Louisiana Court of Appeal, Second Circuit, on January 6, 1970, held that it was bound to accord full faith and credit to the decision of the New York Court of Appeals, basing its decision on applicable decisions of this Court.[10] Two members of the three-judge panel went on to say, in pure dictum, that absent the requirement of full faith and credit, they would find that Article 2400 of the Louisiana Civil Code[11] governed, with the result that the widow had a community interest in the intangible properties. In a concurring opinion the third member of the panel (App. p. 31a, et seq.) said that the court had no business going beyond full faith and credit and res judicata, expressing his opinion that New York

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[9] Petitioner in this Court complains (P. p. 11) that the Louisiana district court's reversal of its prior decision was without warning to her—yet Respondents devoted a very substantial portion of their brief in that court to the argument that the court erred in overruling the motion for partial summary judgment and in urging that the court recall its earlier order; Petitioner had ample time to rebut that argument and, following the decision, she could have under applicable practice (see *Louisiana Code of Civil Procedure, Article 1971*) moved for a new trial, which she failed to do. In this connection, see discussion of Petitioner's failure to raise the federal questions she now raises, *infra*, pp. 28-31.

[10] Including particularly: *Magnolia Petroleum Company v. Hunt*, 320 U. S. 430, 88 L. Ed. 149 (1944); *Durfee v. Duke*, 375 U. S. 106, 11 L. Ed. 2d 186 (1963); and *Milliken v. Meyer*, 311 U. S. 457, 85 L. Ed. 278 (1941).

[11] "All property acquired in this State by non-resident married persons, whether the title thereto be in the name of either the husband or wife, or in their joint names, shall be subject to the same provisions of law which regulate the community of acquets and gains between citizens of this State." *Louisiana Civil Code (1870), Article 2400.*

law might indeed apply and, further, that if the court was going into the question it should do so fully and should examine the evidence relative to the accounting between separate and community assets.

A rehearing was refused on March 3, 1970, and on April 20, 1970, the Louisiana Supreme Court *unanimously* refused a writ of review with the per curiam *"The result is correct"*,[12] the most likely interpretation of which obviously is that the Supreme Court agreed that the Full Faith and Credit Clause was applicable and that the case was disposed of correctly, but that it was unwilling to subscribe to the Court of Appeal's gratuitous comments about the scope of Article 2400 of the Civil Code.

SUMMARY OF ARGUMENT

The Court is here asked to review a Louisiana decision giving effect, under the Full Faith and Credit Clause of the Constitution, to a New York judgment determining the ownership of intangible personal property of a deceased New York domiciliary. In the argument which follows, it will be shown that:

1) The Full Faith and Credit Clause demands that a final judgment rendered by the court of one state be given the same force and effect in every other state that it has in the state of rendition, and the reasons underlying the judgment are not subject to re-examination.

2) The litigation in the New York court system and the subsequent proceeding in Louisiana involved the same parties and the same subject matter. The New York courts had jurisdiction over both. The New York judgment therefore satisfies all requirements of res judicata and full faith and credit.

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[12] App. p. 33a.

3) Petitioner failed to raise, at any stage of the litigation in New York, the purported issues of federal due process and equal protection which she now asserts, and she failed to seek certiorari in this Court following the adverse decision there. Moreover, she failed to raise the alleged federal questions at the trial level in Louisiana, and did so only as an afterthought in the Louisiana appellate court.

4) Even though the Full Faith and Credit Clause precludes re-examination of the merits of the case, the New York decision is eminently correct and is consistent with the Louisiana jurisprudence on the question of ownership of intangible personal property.

ARGUMENT

I

The Judgment of the New York Surrogate's Court, as Affirmed on Appeal, Is a Final Judgment of a Court Having Jurisdiction of the Parties and the Subject Matter, and Was Properly Accorded Full Faith and Credit in the Louisiana Courts.

A. Every Final Judgment of a State Must Be Given the Same Force and Effect in Every Other State That It Has in the State of Rendition, If the Court Rendering It Has Jurisdiction of the Parties and the Subject Matter.

Notwithstanding the dictum in the majority opinion of the Louisiana Court of Appeal, we submit that the choice of law rules applied by the New York courts were not only correct, but are compatible with Louisiana law.[13] However, consistent or not, there can be no question that the Louisiana courts were correct in determining that they must give effect to the New York judgment.

This Court has characterized the requirement that each state accord faith and credit to the judicial proceedings of its sister states as "a nationally unifying force".[14] The language of the Constitution's mandate[15] provides simply:

> "Full Faith and Credit shall be given in each State to the public Acts, Records and Judicial Proceedings of every other State. * * *"[16]

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[13] See discussion in Section II of Argument, *infra*, page 31.

[14] *Magnolia Petroleum Company v. Hunt*, 320 U. S. 430, 439, 88 L. Ed. 149, 155 (1944).

[15] *Article 4, Section 1, United States Constitution.*

[16] Supplementing this mandate is the "Act of Congress," 28 U. S. C., § 1738:

> "The Acts of the legislature of any State, Territory, or Possession of the United States, or copies thereof, shall be authen-

In *Durfee v. Duke*, 375 U. S. 106, 11 L. Ed. 2d 186 (1963), the Court recently stated the general rule in these succinct words:

> "The constitutional command of full faith and credit, as implemented by Congress, requires that 'judicial proceedings . . . shall have the same full faith and credit in every court within the United States . . . as they have by law or usage in the courts of such state . . . from which they are taken.' *Full faith and credit thus generally requires every State to give to a judgment at least the res judicata effect which the judgment would be accorded in the State which rendered it.* 'By the Constitutional provision for full faith and credit, the local doctrines of res judicata, speaking generally, become a part of national jurisprudence, and therefore federal questions cognizable here.' Riley v. New York Trust Co., 315 U. S. 343, 349, 86 L. Ed. 885, 891, 62 S. Ct. 608." (11 L. Ed. 2d 190; emphasis supplied.)

Another clear statement of the rule appears in 30A Am. Jur., *Judgments*, § 241, p. 310:

> "The effect of the full faith and credit clause and of the act of Congress implementing it, which

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ticated by affixing the seal of such State, Territory, or Possession thereto.

"The records and judicial proceedings of any court of any such State, Territory or Possession, or copies thereof, shall be proved or admitted in other courts within the United States and its Territories and Possessions by the attestation of the clerk and seal of the court annexed, if a seal exists, together with a certificate of a judge of the court that the said attestation is in proper form.

"Such Acts, records and judicial proceedings or copies thereof, so authenticated, *shall have the same full faith and credit in every court within the United States and its Territories and Possessions as they have by law or usage in the courts of such State, Territory or Possession from which they are taken.*" (Emphasis supplied.)

provides that judgments shall have such faith and credit given to them in every court within the United States as they have by law or usage in the courts of the state from which they are taken, is to make that which has been adjudicated in one state res judicata to the same extent in every other state. *Thus, a judgment of a state court has the same force and effect in other states as res judicata that it has in the state of rendition.*" (Emphasis supplied.)

Full faith and credit may not be refused on the ground that the judgment is wrong or that the forum court would now decide the controversy differently:

"Where a judgment rendered in one state is challenged in another, a want of jurisdiction over either the person or the subject matter is of course open to inquiry . . . But if the judgment on its face appears to be a 'record of a court of general jurisdiction, such jurisdiction over the cause and the parties is to be presumed[17] unless disapproved by extrinsic evidence, or by the record itself.' Adam v. Saenger, supra (303 U. S. at p. 62; 82 L. Ed. 651, 58 S. Ct. 454). *In such case the full faith and credit clause of the Constitution precludes any inquiry into the merits of the cause of action, the logic or consistency of the decision, or the validity of the legal principles on which the judgment is based* . . . Whatever mistakes of law may underlie the judgment . . . it is 'conclusive as to all media concludendi.' Fauntleroy v. Lum, supra (210 U. S. at p. 237, 52 L. Ed. 1042, 28 S. Ct. 641)." (Emphasis supplied.)

Milliken v. Meyer, 311 U. S. 457, 462, 85 L. Ed. 278, 282, 283 (1941).

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[17] Jurisdiction over the *cause* and the *parties* by the New York courts in the instant case does not rest upon presumption but, rather, upon adjudicated fact. See pages 20-21, *infra*.

Nor may full faith and credit be refused on the grounds that the judgment is based on laws, customs and public policy which differ from those of the forum state. While a state may decline to recognize a *statute* which is repugnant to its own laws, it must give recognition to a *judicial decision* based on that statute; for purposes of full faith and credit, then, a judgment and a statute stand on different footings.

One of the leading cases holding that the public policy of the forum state is to be disregarded in according full faith and credit to a judgment of a sister state is *Fauntleroy v. Lum*, 210 U. S. 230, 52 L. Ed. 1039 (1908), in which Mississippi was required to recognize a Missouri judgment upholding an arbitrator's award on a debt arising out of the sale of cotton futures. The original cause of action arose in Mississippi, where futures contracts were unlawful gambling transactions and therefore unenforceable. The Court held that, notwithstanding Mississippi's laws and policies, the Constitution required full faith and credit to be given to the Missouri judgment.

An excellent and comprehensive review of the subject is found in *Magnolia Petroleum Company v. Hunt*, 320 U. S. 430, 88 L. Ed. 149 (1944). In that case a Louisiana domiciliary was injured in Texas and obtained there an award of workmen's compensation which, under Texas law, had the force of a final judgment. The courts of Louisiana later permitted the workman to recover a second time under the Louisiana workmen's compensation laws, justifying their award on the ground that they were not constitutionally required to disregard their own laws and policies otherwise applicable to the employment injury. The Supreme Court reversed, saying:

> "* * * The contention is that since Louisiana is better satisfied with the measure of recovery allowed by its own laws, it may deny full faith and credit to

the Texas award, which respondent has procured by his election to pursue his remedy in that state. *In thus refusing, on the basis of state law and policy, to give effect to the Texas award as a final adjudication of respondent's claim for compensation for his injury suffered in Texas, the Louisiana court ignored the distinction, long recognized and applied by this Court, and recently emphasized in Williams v. North Carolina, supra (317 U. S. 294, 296, 87 L. Ed. 283, 284, 63 S. Ct. 207, 143 ALR 1273), between the faith and credit required to be given to judgments and that to which local common and statutory law is entitled under the Constitution and laws of the United States.*

"* * *

"The full faith and credit clause and the Act of Congress implementing it have, for most purposes, placed a judgment on a different footing from a statute of one state, judicial recognition of which is sought in another. * * *

"* * * *

"The constitutional command requires a state to enforce a judgment of a sister state for its taxes, * * * or for a gambling debt * * *, or for damages for wrongful death, * * * although the suit in which the judgment was obtained could not have been maintained under the laws and policy of the forum to which the judgment is brought. It compels enforcement of a judgment in that forum, even though a suit upon the original cause of action was barred there by limitations before the judgment was procured, * * *. *It demands recognition of it even though the statute on which the judgment was founded need not be applied in the state of the forum because in conflict with the laws and policy of that state.* * * *

"* * *

"These consequences flow from the clear purpose of the full faith and credit clause to establish throughout the federal system the salutary principle of the common law that a litigation once pursued to judgment shall be as conclusive of the rights of the parties in every other court as in that where the judgment was rendered, so that a cause of action merged in a judgment in one state is likewise merged in every other. The full faith and credit clause like the commerce clause thus became a nationally unifying force. It altered the status of the several states as independent foreign sovereignties, each free to ignore rights and obligations created under the laws or established by the judicial proceedings of the others, by making each an integral part of a single nation, in which rights judicially established in any part are given nation-wide application. * * * Because there is a full faith and credit clause a defendant may not a second time challenge the validity of the plaintiff's right which has ripened into a judgment and a plaintiff may not for his single cause of action secure a second or a greater recovery." (88 L. Ed. 153, et seq.; emphasis supplied.)[18]

These authorities clearly demonstrate that even if there should be any differences between the laws and policies of the States of New York and Louisiana, they were rendered immaterial by the final judgment in the New York proceeding.

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[18] The same rule is recognized by Professor Stumberg in his treatise, *Principles of Conflict of Laws* (3d. ed. 1963), wherein it is said, at page 117:

"It is well settled that the fact that the original cause of action is against the public policy of the forum, or that the foreign court made a mistake of law, is not a valid ground for refusing to allow suit upon the judgment."

See also 30A Am. Jur., *Judgments*, § 253, p. 320.

B. The Adjudication by the New York Surrogate's Court Involved the Same Parties and the Same Subject Matter as the Present Proceeding, and the Court There Had Jurisdiction Over Both.

An examination of the opinion of the New York Surrogate's Court (App. p. 34a)[19] will readily disclose that the same parties to this proceeding were parties to the suit there. That opinion, and the opinion of the New York Court of Appeals (App. p. 54a), likewise reflect that the issue of ownership of the intangible movable properties inventoried in Louisiana was squarely and fully litigated, with the result that there now exists a final judicial determination that those properties belong solely to the estate of the decedent, and that his surviving widow has absolutely no interest in them.

Petitioner took the position in the Louisiana appellate court that Louisiana had exclusive jurisdiction over the intangibles in question. But it seems clear that, until she filed her brief in that court, she had never contended (either in New York or Louisiana) that the New York domiciliary court lacked jurisdiction over those properties, but only that the Louisiana court had *concurrent* jurisdiction for certain purposes of administration, and that her rights would be better protected in a Louisiana forum. In her brief on the jurisdictional question presented to the Louisiana trial court, it was said, at page 15:

> "* * * Mrs. Martha Bailey Crichton, herself a non-resident, has *elected* to invoke the jurisdiction of this Court for a determination of those rights." (Emphasis supplied.)

And, further:

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[19] An authenticated copy of the opinion, along with the Final Order of that Court, is at pages 175, et seq. of the Record.

"This Court has jurisdiction to pass upon the question of ownership which has thus been *submitted* to it as to property over which it has physical custody and control, there can be no doubt." (Emphasis supplied.)

Further evidence of the widow's recognition of the jurisdiction of the New York court is found in the affirmative action taken by her in asserting her claim there:

"Martha Bailey Crichton, widow of the deceased, having claimed in her Notice of Appearance that she was: '* * * an owner of a one-half interest in the personal property which formerly belonged to the community of acquets and gains existing between her and the decedent, * * *' and said claim having been repeated in her objections filed herein; * * *" (App. p. 50a, R. 190.)

It seems apparent that her change of position on appeal took place because the widow had improvidently relied on the principle of *priority of jurisdiction.*[20] It is relevant to note here that even if otherwise applicable[21] the priority principle has no application when the proceedings in one state reach final judgment:

"*The priority principle is not applicable, as a matter of duty, between courts of different American states.* As a matter of comity, however, a court of one state may stay a proceeding pending before it on the ground that a case involving the same subject matter and the same parties is pending in the court of

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[20] In the Louisiana district court, she asserted this argument in the brief on Respondents' motion for partial summary judgment, page 23.

[21] Actually, the Louisiana court never had priority. The New York court first acquired jurisdiction over the estate and all questions involved therein when the will was presented to it for probate on February 11, 1963. The jurisdiction of the Louisiana court was not invoked until more than six months later when, on August 20, 1963, the ancillary proceeding was opened.

another state. *And, of course, in view of the full faith and credit clause of the Federal Constitution, once the proceeding on the same case has been finally adjudicated by the court of a sister state, res judicata effect must be given to it by the court of the forum state.*" 20 Am. Jur. 2d, *Courts*, § 137, p. 486 (Emphasis supplied.)[22]

The acceptance of jurisdiction by the Surrogate was consistent with accepted principles relating to administration of movable properties of a decedent. In Section 470 of the *Restatement of Conflict of Laws*, it is said, in part:

"1. A judgment in administration proceedings by a competent court in the state of domicil will be followed by the courts in other states *in so far as the judgment relates to movables.*

"* * *

"3. A judgment in administration proceedings in *any state* is conclusive *upon all persons* who become subject to the jurisdiction of the court in such proceedings." (Emphasis supplied.)[23]

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[22] The Louisiana courts have recognized and applied this rule. In *Mente & Co., Inc. v. Anciens Etablissements Verdier-Dufour & Cie.*, 177 La. 829, 149 So. 492 (1933), there were before the court for consideration two suits involving the same issues between the same parties, one in Louisiana *which had been first filed*, and the other in New York *instituted approximately one year later*. The Louisiana Supreme Court, holding that a final judgment rendered first in New York would be dispositive of the suit in Louisiana, recognized that:

> "For, when two suits involving the same issues between the same parties are brought before two separate courts *each clothed with jurisdiction thereof*, and both suits are allowed to proceed pari passu, the first judgment rendered in either of said courts is the judgment between the parties, and the suit in the other court immediately abates and must be dismissed." (177 La. 833-834; emphasis supplied.)

[23] "Jurisdiction over the owner of an intangible thing will, in most cases, enable the state to affect the intangible thing as it desires to do." *Restatement of Conflict of Laws*, § 51, Comment b.

And we take it that Petitioner makes no effort whatever to say that the New York Surrogate lacked jurisdiction over her person—she was represented by counsel and actively participated in the proceedings in that court (R. 175).

Whether or not the widow conceded subject-matter jurisdiction in New York, and, for that matter, whether such jurisdiction even existed, has now become irrelevant—for, *once a court determines that it has jurisdiction over the subject matter, in a case in which it has personal jurisdiction over the parties, that determination is itself entitled to recognition under the Full Faith and Credit Clause.* And there cannot be the slightest question that the New York courts did determine that they had jurisdiction:

> "There are a number of questions which must be resolved by this appeal. *The first of these relates to the jurisdiction of the Surrogate to determine whether or not the widow has a community interest in the property in question.* It is urged that the 'Surrogate's Court erred in determining the ownership of property situated in Louisiana since the Surrogate's Court did not have jurisdiction over such property nor over the ancillary executrix appointed in Louisiana.'
>
> "There is little question but that the Surrogate lacked the power to determine the rights of persons, not parties to this proceeding and over whom he had no jurisdiction, in the bank accounts, stocks and bonds located in Louisiana. (Hanson v. Denckla, 357 U. S. 235, 78 S. Ct. 1228, 2 L. Ed. 2d 1283; Riley v. New York Trust Co., 315 U. S. 343, 62 S. Ct. 608, 86 L. Ed. 885; Baker v. Baker, Eccles & Co., 242 U. S. 394, 37 S. Ct. 152, 61 L. Ed. 386.) *The Surrogate, however, does have the power to render a decree which is binding*

on those persons over whom he has in personam jurisdiction. (Hanson v. Denckla, supra, 357 U. S., p. 254, 78 S. Ct. 1228.)

"It is not disputed that the Surrogate had such jurisdiction over the widow and other beneficiaries of the estate. The Surrogate also had jurisdiction over the sole executrix of the estate. * * *" (Emphasis supplied.)[24]

Probably the leading case on the principles of jurisdictional finality is *Durfee v. Duke*, 375 U. S. 106, 11 L. Ed. 2d 186, decided by this Court in 1963, the decision being particularly convincing because the subject matter in question there was land. The suit was brought in a Nebraska court to quiet title to certain bottom land located on the Missouri River, which forms the boundary between the states of Nebraska and Missouri. The plaintiff derived his title from the State of Nebraska and the defendant from the State of Missouri, the determinative issue being whether the land was created by alluvial or by avulsive action of the river. Obviously the Nebraska court could have territorial jurisdiction of the subject matter only if the land was in that state. The parties actively litigated the question in the Nebraska courts, resulting in a final judgment of the Supreme Court of Nebraska to the effect that the land was in Nebraska and owned by the plaintiff. The defendant then commenced an action in the Missouri courts on the ground that, if the land was in fact in Missouri, the Nebraska court could not have had jurisdiction of the subject matter.

The United States Supreme Court unanimously held that, *having personally appeared and litigated the question of jurisdiction in the Nebraska court, the defendant was barred from relitigating that issue in the courts of Mis-*

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[24] *In Re Estate of Crichton*, 20 N. Y. 2d 120, 281 N. Y. S. 2d 811, 815, 228 N. E. 2d 799 (1967). (App. pp. 57a-58a).

souri. That is, the Full Faith and Credit Clause required Missouri to give the same res judicata effect to the Nebraska judgment that it would have in the Nebraska courts. The Court noted, of course, that the decision would affect only the parties who were *personally subject to the jurisdiction of the Nebraska court,* and could not affect the states of Nebraska and Missouri, which were not parties, and which could be compelled to litigate their common boundary only in an original action in the Supreme Court.

We submit that the principle of jurisdictional finality, as enunciated in *Durfee v. Duke,* is squarely determinative of the present case:

> "This doctrine of jurisdictional finality was applied even more unequivocally in Treinies, supra [*Treinies v. Sunshine Mining Co.*, 308 U. S. 66, 84 L. ed. 85 (1940)], *involving title to personal property,* and in Sherrer, supra [*Sherrer v. Sherrer*, 334 U. S. 343, 92 L. ed. 1429 (1948)], involving, like Davis, recognition of a foreign divorce decree. In Treinies, the rule was succinctly stated: '*One trial of an issue is enough. "The principles of res judicata apply to questions of jurisdiction as well as to other issues," as well to jurisdiction of the subject matter as of the parties.*' 308 U. S., at 78, 84 L. ed. at 93." (11 Ed. 2d 192; emphasis supplied.)

The Court clearly distinguished the older case of *Fall v. Eastin,* 215 U. S. 1, 54 L. Ed. 65 (1909), which was cited and relied upon by Petitioner in the Louisiana courts:

> "It is argued that an exception to this rule of jurisdictional finality should be made with respect to cases involving real property because of this Court's emphatic expressions of the doctrine that courts of one state are completely without jurisdiction directly to affect title to land in other States [citing, in Footnote

614, *Fall v. Eastin* and other cases]. *This argument is wide of the mark.* Courts of one State are equally without jurisdiction to dissolve the marriages of those domiciled in other States. *But the location of land, like the domicile of a party to a divorce action, is a matter 'to be resolved by judicial determination'.* Sherrer v. Sherrer, 334 U. S. at 349, 92 L. ed. at 1435, 1 A. L. R. 2d at 1361. *The question remains whether, once the matter has been fully litigated and judicially determined, it can be retried in another state in litigation between the same parties. Upon the reason and authority of the cases we have discussed, it is clear that the answer must be in the negative.*" (11 L. Ed. 2d 193; emphasis supplied.)

Treinies v. Sunshine Mining Co., 308 U. S. 66, 84 L. Ed. 85 (1940), cited by the Court in the *Durfee* case, is another good example of the rule of jurisdictional finality. The holding is clear that *once a competent court having jurisdiction over the parties determines the ownership of personal property, full faith and credit is a bar to further litigation of the question.* In that case the Court was concerned with the res judicata effect of a prior decision of the Idaho courts in an interpleader action filed in Federal Court in the state of Washington. The dispute involved the ownership of stock in a Washington corporation, and the decisive question was whether the stock had previously been distributed in a Washington probate proceeding or whether it was subject to the further jurisdiction of the Washington court. The Idaho courts determined that they had jurisdiction because the stock had been distributed to the legatees, thus divesting the Washington court (a court of limited jurisdiction) of further authority to pass on the question of ownership as between the distributees and their transferees. This Court held that this determination by the Idaho court of its own jurisdiction was entitled to full faith and credit in the Washington courts. The case

thus stands not only for the principle of jurisdictional finality, but also represents a clear application of the rule that once parties who are before a court *in personam* have fully litigated title to movable properties, regardless of any so-called "situs" that the properties may have, the decision is conclusive and is entitled to full faith and credit under the Constitution.

C. The Full Faith and Credit Clause Has Been Found Particularly Applicable in Resolving Attempted Relitigation of Matters Concerning Marital Property Rights and Decedents' Estates.

The constitutional requirement that every judgment of a sister state be given full faith and credit has been enforced in scores of cases involving marital property rights and descent and distribution. There is absolutely no doubt that, so far as concerns *ownership of personal property*, the final judgment of a court having *personal jurisdiction* of the litigants is entitled to recognition in every other state.

Hanson v. Denckla, 357 U. S. 235, 2 L. Ed. 2d 1283 (1958), cited in Petitioner's application to this Court, involved simultaneous litigation in the courts of Florida and Delaware on the question of whether the decedent, a Florida domiciliary, had validly exercised a power of appointment during her lifetime with respect to certain trust assets passed under her will. The principal legal issue was whether the Florida courts had *in personam* jurisdiction of the Delaware trustee under the concept of *McGee v. International Life Insurance Company*, 355 U. S. 220, 2 L. Ed. 2d 223 (1957). The Court held that there were insufficient contacts to justify personal jurisdiction over the non-residents in Florida. However, it was obviously assumed that full faith and credit would have

been given the Florida decree had the court been able to sustain *in personam* jurisdiction, even though the properties in question were in the custody of the Delaware trustee. See 2 L. Ed. 2d at 1293.

In *Baker v. Baker, Eccles & Co.*, 242 U. S. 394, 61 L. Ed. 386 (1917), the distinction between personal jurisdiction and a lack of it is made quite clear. The case involved ownership of stock owned by a decedent in a Kentucky corporation. Under Kentucky law the stock would have gone one-half to the decedent's widow and one-half to his mother, whereas under Tennessee law, all of it would have gone to the widow. The widow secured a judgment in Tennessee holding that the decedent was domiciled in that state and that she, under Tennessee law, was the owner of the stock. However, the mother was not personally made a party to the Tennessee proceedings. Meanwhile, the mother had provoked an administration in a Kentucky court, which found that the decedent was a resident of that state; the widow was not properly joined as a party in Kentucky. However, the widow later filed suit against the corporation in Kentucky to seek issuance of new stock certificates, and the mother intervened. The Kentucky court again held that the decedent was domiciled in that state. The Court held that the Tennessee judgment was not entitled to full faith and credit *because no personal jurisdiction over the mother was ever obtained.* It seems conceded that, had such jurisdiction been present, the judgment would have been conclusive regardless of the location of the stock.

In divorce and separation cases the determination of domicile is often critical, and ultimately determines the ownership of marital property. The courts have not hesitated to say that, if a party makes a personal appearance and actively contests the issues of domicile, the resulting judgment is final and must be recognized in every other

state.[25] Likewise, in probate matters valuable property rights are resolved by a decision as to the decedent's domicile; again determination of this question in a court having jurisdiction over the parties is final.[26] *In all of these cases the location of the personal property involved is irrelevant, as it should be. There is, of course, no difference whatever between those cases and the present case*: THE PRINCIPLE IS THAT THE PARTIES HAVE ACTIVELY LITIGATED THE QUESTION NOW BEFORE THE COURT IN THE STATE OF NEW YORK, AND REGARDLESS OF ANY FICTIONAL LOCATION OF THE INTANGIBLE PROPERTIES IN LOUISIANA FOR CERTAIN PURPOSES, THE CASE CANNOT BE RETRIED.

Intangible personal properties have no situs except by a legal fiction. They may have more than one situs: They may have a fictional situs one place for one purpose and another place for another purpose. But once a court having jurisdiction *in personam* of the parties who are concerned with those incorporeal rights fixes the rights of the parties, that ends the matter. For example, in *Estin v. Estin*, 334 U. S. 541, 92 L. Ed. 1561 (1948), the Supreme Court held that a New York judgment granting a wife permanent monthy alimony created in her a "property interest" which was an intangible, jurisdiction over which could not be exerted through control over a physical thing.

Even where land is the subject matter, the Full Faith and Credit Clause has considerable application. As long ago as 1891, in *Carpenter v. Strange*, 141 U. S. 87, 35 L. Ed. 640, the Supreme Court held that where the New York court had *personal jurisdiction* over the parties it could coerce them *to take action with respect to land in*

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[25] *Sherrer v. Sherrer*, 334 U. S. 343, 92 L. Ed. 1429 (1948).

[26] *Texas v. Florida*, 306 U. S. 398, 83 L. Ed. 817 (1938).

another state, even though the court could not affect the land title directly.

The list of authorities could be extended almost indefinitely. Suffice it to say that the courts are simply not going to permit a party who has once litigated an issue to relitigate that which has been finally decided against him. The Full Faith and Credit Clause is thus a constitutional codification of the law of res judicata.[27]

D. Petitioner Has Failed to Meet the Issue of Constitutional Full Faith and Credit, and Instead Has Belatedly Raised Questions of Due Process and Equal Protection Which Were Neither Seriously Urged in the Louisiana Courts Nor Raised in the New York Courts At All.

We have previously commented that the widow originally urged upon the Louisiana district court the principle of "priority of jurisdiction" in attempting to avoid the effect of the judgment of the New York Surrogate's Court. When later faced with final affirmation of that judgment by New York's appellate courts, she altered her position by arguing that Louisiana had *exclusive* jurisdiction based on the so-called situs of the intangible properties in Louisiana. She has not previously met the question of full faith and credit, and her Petition plainly shows that she has not done so here. A brief look at the authorities she cites in this Court is indicated:

Clark v. Williard, 294 U. S. 211, 79 L. Ed. 865 (1935), involved a controversy between the liquidator of an Iowa corporation and certain judgment creditors of the corporation who sought to execute on property it owned in Montana. The extent of the holding is that, although Iowa is entitled to say that a liquidator with title appointed pursuant to her statutes shall be recognized as

[27] See, for example 50 C. J. S., *Judgments*, § 689.

such by Montana, Iowa may not by her statutes say what distribution of Montana assets a liquidator with title must make. The opinion does not contain the slightest suggestion that the parties had previously litigated the question of ownership of the assets in a prior proceeding, and the only full faith and credit issue in the litigation thus involved the extent to which Montana was required to give recognition to the applicable Iowa *statutes.*[28] Moreover, there is no mention in the Court's opinion of the nature of the property with which the suit was concerned, that is, whether it was land, or tangible or intangible personalty.

Pink v. A. A. A. Highway Express, Inc., 314 U. S. 201, 86 L. Ed. 152 (1941), is but another case in which the Court entertained the requirements of full faith and credit as applied to *statutes* of another state rather than *judgments.*

The only other authority mentioned in the Petition is *Hanson v. Denckla*, 357 U. S. 235, 2 L. Ed. 2d 1283 (1958), discussed previously, in which the Court failed to find that the parties were personally subject to the jurisdiction of the Florida court. The case plainly supports Respondents' position, rather than Petitioner's, and of course recognizes the difficult problems of jurisdiction over intangible personal property where the court does not have *in personam* jurisdiction of the litigants.

Nowhere in Petitioner's application to this Court do we find the barest reference to any of the full faith and credit cases[29] relied on in the Louisiana court's opinion. We find

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[28] See cases distinguishing between statutes and judgments for purposes of full faith and credit, *supra*, pages 14-16.

[29] *Magnolia Petroleum Company v. Hunt*, 320 U. S. 430, 88 L. Ed. 149 (1944); *Treinies v. Sunshine Mining Co.*, 308 U. S. 66, 84 L. Ed. 85 (1940); *Durfee v. Duke*, 375 U. S. 106, 11 L. Ed. 2d 186 (1963); and *Milliken v. Meyer*, 311 U. S. 457, 85 L. Ed. 278 (1941).

only the unsupported general statement (and this, despite the widow's active participation in the New York suit) that the disposition made by the Louisiana court of the case by application of the Full Faith and Credit Clause somehow offends Petitioner's Fourteenth Amendment guarantees by divesting her of vested property rights and by denying her privileges afforded Louisiana residents.

It is appropriate here to note the lack of procedural background or basis for the constitutional complaints by Petitioner in this Court. Her petition (pp. 10-11) recites that the federal questions, as she delineates them, were first presented in the Louisiana district court by way of *Respondents'* efforts to cause that court to give full faith and credit to the New York decree. The federal questions presented by Petitioner, in her certiorari application to this Court, however, are *not* ones of full faith and credit but of due process and equal protection—questions which she utterly failed to raise in the district court by pleading, brief or any other means. This is so notwithstanding that she filed a comprehensive brief in opposition to Respondents' motion for partial summary judgment in which the issue of full faith and credit was initially tendered. Not one word is said in that brief to the effect that application of full faith and credit would result in denial of due process or equal protection.

In the Louisiana Court of Appeal, Petitioner filed a brief of fifty pages. She devoted a total of *two short paragraphs* (at pages 24 and 30, respectively), with *no citation of authority*,[30] to the constitutional questions on which she now seeks certiorari, and the court made no mention of them in its opinion.

Due process and equal protection simply have never been issues in this case.

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[30] Similiarly, Petitioner refers in her present application to no decision on the subject of due process and equal protection.

If Petitioner feared that an adverse decision in New York would divest her of property rights accorded her by the community property laws of Louisiana, or that such a decision would result in her being denied privileges available to citizens of Louisiana, then the proper forum for raising these allegedly important issues was not *Louisiana* (whose courts, at the time the case was presented to them, were precluded by res judicata and full faith and credit from re-examination of matters already determined) but *New York*, where the ownership of the properties was initially litigated. After all, if Petitioner possessed any vested rights under Louisiana law (which is, of course, denied), she certainly possessed them at the time she participated in the New York proceedings. *IN FACT, WHETHER OR NOT PETITIONER HAD ANY RIGHTS UNDER LOUISIANA LAW WAS PRECISELY THE QUESTION THAT SHE LITIGATED IN THE NEW YORK COURTS!* Those courts afforded her full due process of law and, having done so, determined that the law of the matrimonial domicile, New York, was the proper law to be applied. The record is barren of evidence that the Fourteenth Amendment questions were raised in New York, and it seems apparent from the New York courts' opinions (App. pp. 34a; 54a) that the case which was presented for resolution there was purely one of choice of law. Petitioner should have raised there the federal questions she now urges, and, we submit, she lost her right to seek review in this Court by not coming here following the decision of New York's highest court.

In summary, the proceedings in both States reflect that Petitioner failed to raise timely any substantial federal question, her only reference to due process and equal protection[31] being at the appellate level in Louisiana, and

[31] For a case rejecting a similar equal protection argument made by a widow, and involving Louisiana property, see *Conner v. Elliot*, 18 How. 591, 15 L. Ed. 497 (1856).

there in such an inconsequential way that mention of it in the court's opinion was not warranted. The only substantial federal question decided in either New York or Louisiana was the decision applying full faith and credit. That question was decided in favor of applying the constitutional guarantee, and it was decided exactly in accord with applicable decisions of this Court.

II

The New York Courts Were Correct in Holding That Ownership of Intangible Personal Property Is to Be Resolved by Application of the Law of the Matrimonial Domicile.

As previously shown, the correctness of a final decision is not a proper subject of inquiry in the courts of a sister state that are asked to give the decision constitutional recognition. However, we believe it worthy of comment to point out that this Court, by refusing certiorari, will not thereby countenance the enforcement of an unjust or erroneous decision. It was entirely proper for Petitioner to lose her case in New York, because the courts there decided the controversy on the basis of well-accepted choice of law rules which do not support her claim of ownership. Moreover, even though the posture of the Louisiana jurisprudence on the question is not entirely free of doubt, we earnestly submit that the Supreme Court of that state in all probability would have reached the same conclusion as that reached in New York had the case gone to Louisiana's highest court on the choice of law question.

The decedent and his wife were not married in Louisiana and they never resided in that state as husband and wife (R. 289). The state of their matrimonial domi-

cile, as well as the domicile of the decedent at his death, was New York (App. pp. 35a, 41a; R. 17, 19). The case involves only intangible, incorporeal properties. The administration of the estate is in New York. The executrix is a resident and domiciliary of that state (R. 12). There is an estate tax due the State of New York on the property in question, but no inheritance tax is due the State of Louisiana.[22] There are no debts of the ancillary Louisiana succession other than those arising in respect of inheritance taxes on land and expenses of administration (R. 80-86), and there is accordingly no need for an administration of the personal property in that state. However, there are debts and claims in the domiciliary administration (R. 148) to which the personal property in Louisiana ultimately will be subject.

It is therefore not surprising that the New York courts found that their state had the paramount, if not exclusive, governmental interest in the marriage and its incidents, and they gave application to the rule that the state of the matrimonial domicile (or, in the case of separate domiciles, the law of the state of the domicile of the spouse who acquired the property) controls as to ownership of intangible personal property. That their decision is the prevailing rule to be applied in marital property cases is reflected by a wealth of authority:

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[22] *Louisiana Revised Statutes 47:2404* specifically excepts intangible property from inheritance taxes, if owned by a non-resident, obviously on the theory that the domicile is the legal situs of the property and determines its descent and distribution. The estate tax levied by the State of New York deals with intangible personal property in exactly the same fashion as does the Louisiana tax law. Under New York law, the gross estate of a deceased resident is defined as his Federal gross estate (whether or not a Federal Estate Tax return is required to be filed) reduced by the value *of real or tangible personal property having an actual situs outside New York.* (*Tax Law*, §956 (a); *Consolidated Laws of New York*). Thus the estate includes *intangible* personal property owned by the decedent at the time of his death, wherever located.

"§ 290. MOVABLES ACQUIRED DURING MARRIAGE.

Interests of one spouse in movables acquired by the other during the marriage are determined by the law of the domicil of the parties when the movables are acquired. *Comment:*

"* * *

"C. *When spouses have separate domiciles.* If the spouses have separate domiciles at the time of the acquisition of movables, the law of the domicil of that spouse who acquires the movables determines the extent of the interest of the other spouse therein."

Restatement, Conflict of Laws, § 290.

"In accordance with the rule that personalty, for some purposes, may be regarded as having its situs at the domicile of the owner, as stated in the title Conflict of Laws, § 18, the status of personalty as separate or community property is generally controlled by the law of the owner's domicile. Thus certain personal property acquired in another state by a resident of a community property state has been held to be controlled by the community law of the matrimonial domicile, *and intangible personalty at least, acquired in a community property state by a nonresident thereof, has been held to be controlled by the law of the marital domicile.*" (Emphasis supplied.)

41 C. J. S., *Husband and Wife*, § 466, p. 992.

"* * * In this country the courts have divided as between the controlling effect of the law of the domicile of the parties at the time the movables were acquired and the law of the situs. It is believed that by far a majority have applied the law of the domicile at the time and not the situs law.[33] This majority rule is that provided for in the Restatement.

[33] In support of this statement, Professor Stumberg cites, among other cases, *Succession of Packwood*, 9 Rob. 438 (La. 1845).

"There should be no real doubt that the courts of the situs of tangible property, whether real or personal, could effectively make their ownership policy as to marital interest govern if they so desired. But marital property relations are so closely identified with the other marital relations of the spouses that it seems to be better policy, from the point of view of convenience, to give controlling effect to the domiciliary law, in so far as movables are concerned. Local policy with respect to land is, however, generally regarded as of such importance as to override other considerations of convenience."

Stumberg, *Conflict of Laws* (2 ed. 1951), p. 314.

Recognition of this rule was given in a factual situation similar to the present case by the courts of Texas (a community property state) in *Tirado v. Tirado*, 357 S. W. 2d 468 (Tex. App. 1962). It was there held that proceeds from the sale of oil and gas received by the wife, who owned a working interest in Louisiana oil and gas leases at the time of her marriage and who was married and domiciled in Texas until her divorce, were controlled by the law of the matrimonial domicile (Texas), remained therefore her separate property and did not constitute part of the community between her and her husband. The converse of the present facts was entertained by the Florida courts in *Quintana v. Ordoño*, 195 So. 2d 577 (Fla. App. 1967); affirmed, 202 So. 2d 178 (Fla. 1967). Personal property (stock in a Florida corporation) was acquired in Florida, a non-community property state, from earnings made by the husband there at a time when he and his wife were domiciled in Cuba where the community property regime exists. Holding, in conformity with the laws of Cuba, that the stock was community, with the decedent's widow having a vested interest therein, the court made these pertinent remarks:

"As plaintiffs [deceased husband's children by former marriage] contend, the law of the situs has primary control over property within its borders. However, by the almost unanimous authority in America, the 'Interests of one spouse in movables acquired by the other during the marriage are determined by the law of the domicile of the parties when the movables are acquired'.[2] This rule is applicable where the money used to purchase the movables is earned from services performed in a place other than the place of the domicile. We accept this rule, founded on convenience, as the only logical method of determining marital interest in movables.

"[2] Restatement, Conflict of Laws, § 290 (1934); LeFlar, Conflict of Laws, § 176 at 336 (1959); Stumberg, Conflict of Laws, 313 (2d ed. 1951); 2 American Law of Property, § 7.18 at 163 (Casner ed. 1952)." (195 So. 2d 579).

The Louisiana courts have long recognized and given application to this choice of law rule in respect of marital property. See:

Hicks v. Pope, 8 La. 554 (1835);
Young v. Young, 5 La. Ann. 611 (1850);
Succession of McKenna, 23 La. Ann. 369 (1871);
Hyman, Lichtenstein & Co. v. Schlenker & Hirsch, 44 La. Ann. 108, 10 So. 623 (1892);
Williams v. Pope Manufacturing Co., 52 La. Ann. 1417, 27 So. 851 (1900).

The argument to the contrary advanced by Petitioner is that Article 2400 of the Louisiana Civil Code[34] embraces all species of property acquired by non-residents of Louisiana. In addition to the obvious conflict between such an interpretation and the general rule that the law of the own-

[34] Quoted in footnote 11, *supra*.

er's domicile governs the ownership of intangible personal properties, and the problems inherent in determining the situs of intangible properties if the rule is not applied,[35] it is significant that such an interpretation has not been given by the Louisiana courts. In point is the decision rendered in *Williams v. Pope Manufacturing Co., supra,* wherein the court framed the issue presented as follows:

> "* * * [T]he question for consideration is whether (1) the damages sued for by the plaintiff in her own right, as having been sustained by her while temporarily in Louisiana, and which accrued to her separately, are subject to and to be controlled by the law of her matrimonial domicile; (2) or to be governed and controlled by the laws of the state of Louisiana which regulate the matrimonial relations and property rights of married persons who reside outside of its limits but acquire property rights within its limits." (52 La. Ann. 1424.)

Holding that Article 2400 is not applicable to intangible personal property, the court announced:

> "* * * (7) That under the law governing the jurisprudence in the State of Mississippi *personal property* that is situated at the domicile of a citizen of that state is governed thereby, and same does not become subject to the law of Louisiana. (8) *That the foregoing rule is especially applicable to 'debts which follow the creditor's person.'* (9) That the rule thus announced does not apply to personal or movable property situated in this state, but it *does apply to debts and other incorporeal rights, which attach to the per-*

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[35] It should be borne in mind that, in the present case, the decedent by the mere stroke of his pen could have transferred bank deposits from Louisiana to New York prior to his death, and could have with the same ease caused stock certificates, bonds, etc., to be sent to him in New York.

son of the creditor, and pass with him into any jurisdiction where he may go." (52 La. Ann. 1439; emphasis supplied.)

The late renowned Louisiana authority, Professor Harriet S. Daggett, in her text, *The Community Property System of Louisiana* (1949), has said of the *Williams* case:

> "*This decision* * * * *would seem to be indicative on the point that no attempt will be made to bring choses in action under the community regime, so far as nonresidents are concerned.*"[36] (p. 111; emphasis supplied.)

And in an article entitled "Marital Property and the Conflict of Laws," 5 *Louisiana Law Review* 167, 170 (1942-44), the author notes that, while Article 2400 of the Civil Code prescribes the application of the *lex rei sitae* in respect of immovables acquired in Louisiana by nonresident married persons,

> "It is doubtful whether this section embraces movables."

The intangible personal properties involved in this proceeding are clearly choses in action or incorporeal rights which have their situs at the domicile of the decedent in New York and cannot, under the rule of the *Williams* case, be said to have been acquired in Louisiana within the meaning of Article 2400.[37] The relevancy of the particular

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[36] "Choses in action" correspond to the civil law definition of incorporael rights. See: *Louisiana Civil Code, Article 460*; *Marcenaro v. Bertoli*, 2 La. Ann. 980 (1847); *Gordan & Gomila v. F. Muehler*, 34 La. Ann. 604 (1882); *Pan American Production Co. v. United Lands Co., Inc.*, 96 F. 2d 26 (CCA 5th 1938).

[37] The Louisiana cases holding that the situs of particular kinds of intangible property is at the domicile of the owner are:

Sugar v. State, 243 La. 217, 142 So. 2d 401 (1962). (Interest in partnership characterized as "intangible by nature," with

kind of marital property involved, and its situs, to a proper determination of the applicability of a statute of the character of Article 2400 is emphasized in 41 C. J. S., *Husband and Wife*, § 466, p. 991:

> "As a general rule the law of the matrimonial domicile controls the property rights of husband and wife. The character of the property as community or separate may be controlled by its actual or fictional situs, and *in determining the applicability of a community property statute to property acquired in one state while the matrimonial domicile is in another, the situs of the property must be determined by reference to the general distinction between movable and immovable property.*" (Emphasis supplied.)

In view of the limited scope of Article 2400, we submit that the well recognized rule of the matrimonial domicile in matters of ownership of intangible personal property is firmly fixed in the jurisprudence of Louisiana. We concede, as we must, that the majority of the Louisiana Court of Appeal for the Second Circuit expressed a contrary opin-

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situs at domicile of partner rather than in the state where the partnership was conducted.)

Succession of Rosenthal, 163 La. 673, 112 So. 525 (1927). (Bonds were intangible movables having their situs at domicile of owner.)

Peters v. Cooper, 90 So. 2d 892 (La. App. 1956). (Corporate stock for which certificates were physically in New York held to have situs in Louisiana at domicile of owner.)

Succession of Packwood, 9 Rob. 438 (La. 1845). (Bank deposit in Louisiana representing proceeds from sale of sugar crop grown on Louisiana plantation owned by New York married couple had situs in New York.)

See also, *Opinions of Louisiana Attorney General*, 1944-46, p. 1011, and 1948-50, p. 732, holding that deposits in Louisiana banks belonging to non-resident deceased persons are intangibles having a situs at the domicile of the owner and as such are beyond the reach of the Louisiana Inheritance Tax Law.

ion in the dictum which accompanied its application of the Full Faith and Credit Clause. It is that dictum, no doubt, that is responsible for the filing of the Petition which the Court now has before it. But, as previously noted, the Louisiana district court reached the conclusion that the New York Court of Appeals had correctly determined the issue, and, most significantly, the Louisiana Supreme Court was careful to avoid giving its blessing to the *opinion* of the intermediate court, as distinguished from the *result reached*. That opinion, when considered in the light of previous decisions of Louisiana's highest court, plainly is not the final word in Louisiana.

CONCLUSION

It is appropriate to observe in closing that Powell Crichton died some eight years ago. His estate is not a large one—the intangibles involved in the suit amount to some $300,000.00 (before taxes), of which the widow claims one-half. The litigation between Petitioner and Respondents has been heard in three New York courts and two courts in Louisiana. If this Court should grant certiorari and ultimately should reverse the Louisiana appellate court, the case by no means will be at an end. The Louisiana Supreme Court has not yet been heard from on the choice of law question. In addition, even assuming that that tribunal should determine the question in Petitioner's favor, the courts in Louisiana (perhaps beginning at the trial level) will then have for decision the accounting between separate and community assets to which the Louisiana trial was devoted.

The Full Faith and Credit Clause is intended to avoid a proliferation of legal proceedings between the same adversaries in different states. New York has done only what it is unquestionably entitled to do—it has held, ac-

cording to universally accepted principles, that its laws govern the marital property rights of its residents as to intangible personal properties. Petitioner has had a long day in court and to permit her to escape the consequence of a judgment unfavorable to her would violate every precept of fairness, equity and justice. Her Petition should be denied.

Respectfully submitted

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Supreme Court, U.S.
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No. 262

IN THE

Supreme Court of the United States

OCTOBER TERM, 1970

MRS. MARTHA BAILEY CRICHTON,
Petitioner

vs.

MRS. GLORIA CRICHTON McGEHEE
and POWELL CRICHTON, JR.,
Respondents

REPLY TO RESPONDENTS' BRIEF IN OPPOSITION TO PETITION FOR WRIT OF CERTIORARI

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No. 262

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MRS. MARTHA BAILEY CRICHTON,

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Respondents

REPLY TO RESPONDENTS' BRIEF IN OPPOSITION TO PETITION FOR WRIT OF CERTIORARI

Availing ourselves of the right accorded by Rule 24 of this Court, we make brief reply to Respondents' opposing brief as recently filed in this Court.

Essentially, the brief which has been filed by Respondents in opposition to the petition for a writ of certiorari is a brief on the merits of this litigation.

The entire thrust of Respondents' argument, as incorporated in their brief, is to defend the action

of the Louisiana Court in according full faith and credit to the judgment of the New York Court. We are perfectly willing to meet that issue and will meet it in brief and argument when the matter comes up on its merits in this Court.

But that is not the issue here.

If, under Article 2400 of the Louisiana Revised Civil Code,[1] the property here in litigation is "subject to the same provisions of law which regulate the community of acquets and gains between citizens of this State" (as was held to be the case by a majority of the Louisiana Court of Appeal); and if, under the law of Louisiana, "title to one-half of the community property from the very moment of its acquisition is . . . . . vested in the wife";[2] and if (as was also held by the Court of Appeal) the according of full faith and credit to the judgment of the New York Court results in the vesting in the succession of the deceased husband of title to the wife's share of the community property; then we submit it requires no citation of authority to demonstrate that by the application of the Full Faith and Credit clause in this instance this petitioner has been divested of valuable property rights accorded her by the Louisiana law, and has been denied the equal protection of the law.

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1 **Quoted at p. 6 of Petition.**

2 **Succession of Helis (1954) 226 La. 133, 75 So. (2d) 221, cited at p. 16 of Petition.**

Such a result runs counter to another provision of the United States Constitution, namely the Due Process and Equal Protection clauses of the Fourteenth Amendment, and squarely presents the questions discussed in our original petition.

Respondents in their brief (pp. 28-31) question the procedural basis for the constitutional issues presented to this Court.

We have pointed out in our original petition (pp. 10-12) the unequivocal language in which these issues were presented to the Louisiana appellate courts. The fact that those courts may not have discussed those specific issues does not alter the fact of their having been raised.

As noted in our original petition, the questions here presented were specifically raised in petitioner's brief to the Court of Appeal, in her application to that Court for a rehearing, in her brief in support of that application, and in her application (and supporting brief) to the Supreme Court seeking review by that Court.

The Louisiana Code of Civil Procedure defines an appeal as "the exercise of the right of a party to have a judgment of a trial court revised, modified, set aside, or reversed by an appellate court".[3] The

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[3] **Art. 2082, C. C. P.**

same Code provides that "an assignment of errors is not necessary in any appeal",[4] and that "the appellate court shall render any judgment which is just, legal, and proper on appeal".[5]

We know of no provision of law which requires a more substantial procedural basis for presenting these questions to this Court than the basis already laid by petitioner in the Louisiana courts.

We feel that there is nothing further in respondents' brief which merits a reply at this time and again urge that the petition for writ of certiorari should be granted.

Respectfully submitted,

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4 **Art. 2129, C. C. P.**
5 **Art. 2164, C. C. P.**

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IN THE

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OCTOBER TERM, 1970

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MRS. MARTHA BAILEY CRICHTON,

Petitioner,

—VS.—

SUCCESSION OF POWELL CRICHTON (MISS MARGARET S. HEMINGWAY, ANCILLARY TESTAMENTARY EXECUTRIX), MRS. GLORIA CRICHTON McGEHEE and POWELL CRICHTON, JR.,

Respondents.

ON PETITION FOR A WRIT OF CERTIORARI TO THE COURT OF APPEALS, SECOND CIRCUIT, STATE OF LOUISIANA, OR, IN THE ALTERNATIVE, TO THE SUPREME COURT OF LOUISIANA

PETITION FOR REHEARING

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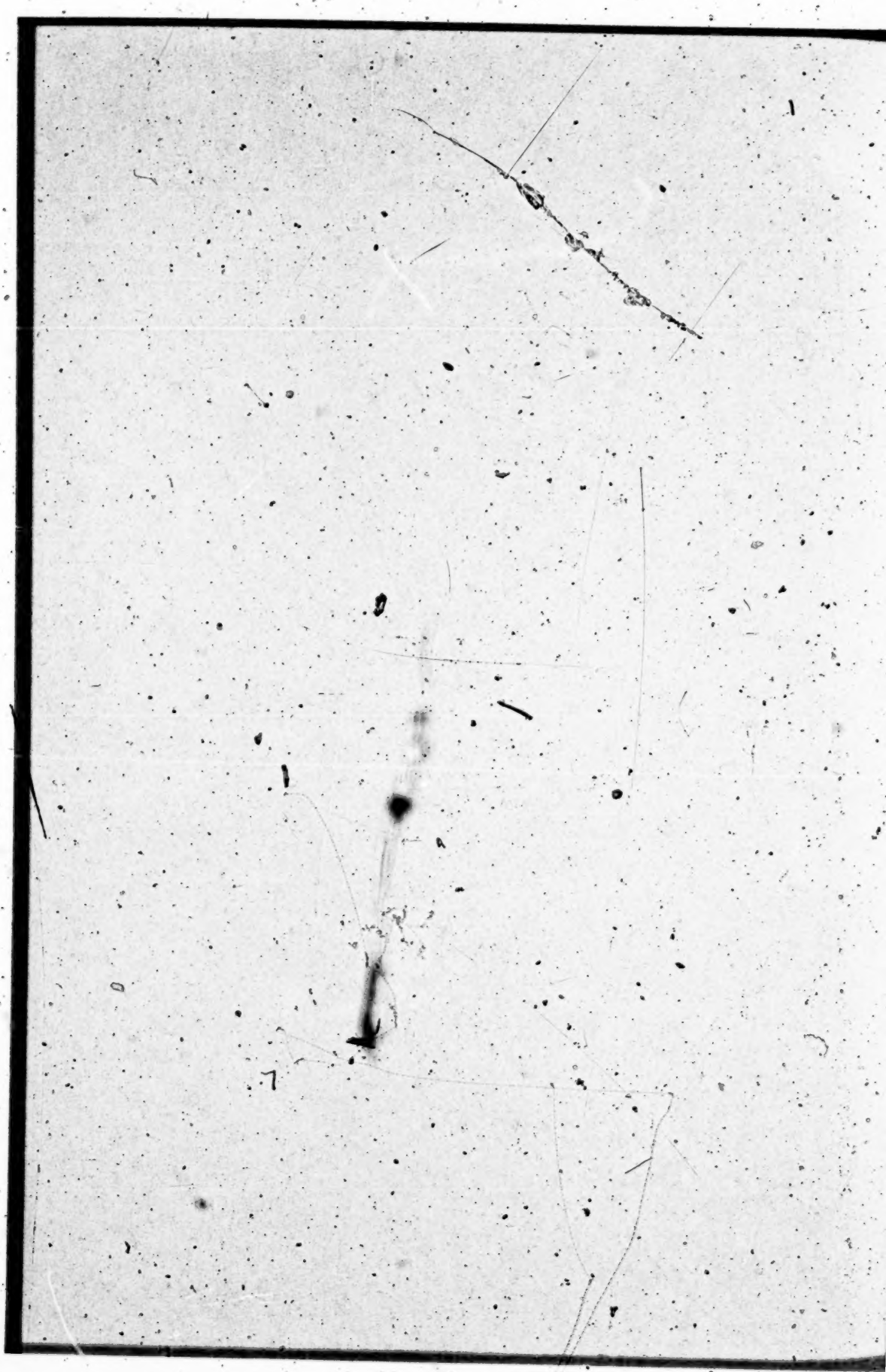

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IN THE

Supreme Court of the United States

October Term, 1970

No. 262

MRS. MARTHA BAILEY CRICHTON,

Petitioner,

—vs—

SUCCESSION OF POWELL CRICHTON (MISS MARGARET S. HEMINGWAY, ANCILLARY TESTAMENTARY EXECUTRIX), MRS. GLORIA CRICHTON McGEHEE and POWELL CRICHTON, JR.,

Respondents.

ON PETITION FOR A WRIT OF CERTIORARI TO THE COURT OF APPEALS, SECOND CIRCUIT, STATE OF LOUISIANA, OR, IN THE ALTERNATIVE, TO THE SUPREME COURT OF LOUISIANA

PETITION FOR REHEARING

The Petitioner herein respectfully moves this Court for an order (1) vacating its denial of the petition for writ of certiorari, entered on November 16, 1970, and (2) granting the petition. As grounds for this motion, Petitioner states the following:

This case presents a novel and vitally important question of concern not only to the residents of community property states but also to those owning property therein, and in-

volves the ownership of intangible movable properties (bank deposits, U.S. Treasury bonds, corporate stocks, etc.) all of which are situated in the community property state of Louisiana, all of which were acquired during the period of decedent's marriage to Petitioner and which under Louisiana law, and past decisions of this Court, constituted vested community property in both husband and wife. Contrary to the rule of law applicable to real property in the same circumstances, by which one-half interest was conceded to Petitioner, the courts of New York found that Petitioner had no interest in the intangible movable property in Louisiana and the Louisiana Court felt bound to accord full faith and credit to the judgment of the New York Court.

The novel question presented is whether Petitioner is retroactively deprived of property vested under a community property statute, without compensation, contrary to due process and the equal protection of the law, when, after the Courts of a non-community property state determine, contrary to past decisions of this Court and to the community property statute as interpreted by the Courts of Louisiana, that no vested property right is involved, the Louisiana Courts, though in disagreement with the finding, rule that they are bound by the full faith and credit clause to follow the decree of the non-community property state.

I. Prior Decisions Of This Court Clearly Hold That Both Husband And Wife Have A Present Vested Interest In Community Property.

In *Bender* v. *Pfaff*, 282 U.S. 127, 132 this Court held that in Louisiana, under the community property law, the wife has a present vested interest in community property equal to that of her husband. This Court is recognizing the wife's

ownership, under the Louisiana law, of one-half of the community property and of the income therefrom, stated:

> "As in the case of other states, whose law we have discussed in connection with this matter[1] . . ., *each spouse may by will dispose of only his or her one-half of the community and is powerless to affect the other's half.* In case of death intestate one-half descends to the heirs of the decedent, and the other spouse is powerless to prevent this." (Emphasis added.)

The Fifth Circuit Court of Appeals, in the case of *Henderson's Estate* v. *Commissioner of Internal Revenue*, 155 F. (2d) 310, 312 (5th Cir. 1946) stated:

> "There is no use in comparing or distinguishing decisions dealing with the statutory laws of other community-property states; both the Supreme Courts of Louisiana[2] and of the United States have dealt explicitly with the character of the wife's community interest in Louisiana. *Both courts have held that her one-half interest is not a mere expectancy during the marriage but vests in her upon the acquisition of the property.* They have compared her interest to that of a partner in the property of a partnership, the affairs of which have been entrusted to a managing partner. *Upon the death of the husband her title is enhanced, not diminished.* By death

[1] In the companion cases to *Bender* v. *Pfaff* (*Hoe* v. *Sanborn*, 282 U.S. 101; *Goodell* v. *Koch*, 282 U.S. 118; and *Hopkins* v. *Bacon*, 282 U.S. 122), this Court also held that in the community-property states of Washington, Arizona, and Texas, as in Louisiana, *the wife has a vested property right in the community property equal to that of her husband*; see also *Warburton* v. *White*, 176 U.S. 484, 494; *Arnett* v. *Reade*, 220 U.S. 311.

[2] *Succession of Helis*, 226 La. 133, 75 So. 2d 221 (1954); *Azar* v. *Azar*, 239 La. 941, 120 So. 2d 485 (1960). See Petition p. 16.

the husband loses a power over property that he never owned, and the widow gains new powers over property that was already hers. This shift of power is substantial enough to be a rational basis for the levy of a federal estate tax." (Emphasis supplied.)

II. To Retroactively Deprive Petitioner Of Her Property Rights Without Compensation Contrary To The Community Property Laws Of Louisiana And Past Holdings Of This Court Presents The Novel Question "Must The Due Process And Equal Protection Clauses Give Way To The Superior Authority Of The Full Faith And Credit Clause."

The question before this Court involves the ownership of intangible movables (bank deposits, U.S. Treasury bonds, corporate stocks, etc.) all of which were acquired during the period of decedent's marriage to Petitioner and which under Louisiana law, and past decisions of this Court, constituted vested community property.

The New York Courts refused to recognize the applicability of the Louisiana community property law (L.R.C.C. Art. 2400) and held that no community of acquets and gains existed (Appendix 46a, 52a).

Nevertheless, the Court of Appeals, Second Circuit State of Louisiana (Appendix 30a), affirmed by the Supreme Court of Louisiana (Appendix 33a), stated:

> "In view of the clear language of Article 2400 and the preceding authorities *we are convinced that Mrs. Crichton was entitled as a substantive right to a one-half interest in the movable property left by the deceased under Louisiana Law.* However, as a consequence of the Full Faith and Credit Clause of the Federal Constitution *we are bound to hold* that the judgment of the State of New York is entitled to res judicata effect in Louisiana." (Emphasis supplied.)

The Full Faith and Credit Clause as applied by the Louisiana Courts has thus been made to operate retroactively and to divest Petitioner of rights of ownership and possession in intangible movable properties which had already vested in her under the law of the state where the properties were, in fact, located.

This Court is the only forum vested with the power to determine whether the rights guaranteed by the Fourteenth Amendment must give way in the circumstances presented to the superior authority of the Full Faith and Credit Clause.

CONCLUSION

For the reasons set forth above, as well as those contained in the petition for writ of certiorari and reply to respondents brief in opposition, Petitioner prays that this Court grant rehearing of the order of denial, vacate that order, grant the petition and review the judgment and opinion below.

Respectfully submitted,

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CERTIFICATE OF COUNSEL

As counsel for the Petitioner, I hereby certify that this petition for rehearing is presented in good faith and not for delay and is restricted to the grounds specified in Rule 58(2).

/s/ CHARLES S. RHYNE
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